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Report of the Congressional Committees Investigating the

Iran-Contra Affair

With
Supplemental, Minority, and Additional Views

Lee H. Hamilton, *Chairman,*
House Select Committee
Daniel K. Inouye, *Chairman,*
Senate Select Committee

U.S. House of Representatives
Select Committee to Investigate
Covert Arms Transactions with Iran

U.S. Senate Select Committee
On Secret Military Assistance to Iran
And the Nicaraguan Opposition

November 13, 1987.—Committed to the Committee of the Whole House
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U.S. HOUSE OF REPRESENTATIVES
SELECT COMMITTEE TO INVESTIGATE
COVERT ARMS TRANSACTIONS WITH IRAN
UNITED STATES CAPITOL
WASHINGTON, DC 20515
(202) 225-7902

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November 13, 1987

The Honorable Jim Wright
Speaker of the House
U.S. Capitol
Washington, D.C.

Dear Mr. Speaker:

Pursuant to the provisions of House Resolutions 12 and 294, 100th Congress, First Session, I transmit herewith the Report of the Congressional Committees Investigating the Iran-Contra Affair, which the Select Committee to Investigate Covert Arms Transactions with Iran ordered reported to the House on November 5, 1987. The report includes findings, conclusions and recommmendations, together with supplemental, minority and additional views.

Within the next 30 days, the Select Committee will file for printing the accompanying appendices to the report. The complete set of appendices will include volumes containing a chronology of events; a testimonial chronology; miscellaneous documents used as sources in the committee report; depositions conducted by the Committees; and an index to the report and appendices. After filing, the appendices will, where appropriate, be declassified before they are printed. If necessary, the Committees will also file an appendix containing classified information. The appendices will be published as soon as possible after declassification.

Sincerely yours,

Lee H. Hamilton
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United States Senate
SELECT COMMITTEE ON SECRET MILITARY
ASSISTANCE TO IRAN AND THE NICARAGUAN OPPOSITION
WASHINGTON, DC 20510

November 17, 1987

Honorable John C. Stennis
President pro tempore
United States Senate
Washington, DC

Dear Mr. President:

We have the pleasure to transmit herewith, pursuant to Senate Resolution 23, the final Report of the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition. We will submit such other volumes of Appendices to the Report as are authorized and as they become available.

Sincerely,

Daniel K. Inouye
Daniel K. Inouye
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Warren B. Rudman
Warren B. Rudman
Vice Chairman

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Footnotes appear at the end of the each chapter and refer to a variety of sources available to the Committees. The most common are:

1. *Hearings*. Refers to *The Iran-Contra Investigation: Joint Hearings Before the House Select Committee to Investigate Covert Arms Transactions with Iran and the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition*, 100th Cong., 1st Sess. (Washington: Government Printing Office, 1987, 13 vols.). Most page references in the footnotes are to these volumes. Because of publication production necessities, however, some references are to the original transcripts of the hearings. A table converting transcript page numbers to hearings page numbers is published in the *Hearings*.

2. Dep. or Depo. A sworn deposition taken in the presence of one or more Members of the Committees and/or counsel for the Committees, and counsel for the deponent. Please consult other volumes of the Committees' publications for further information.

3. Int. An unsworn interview conducted by one or more Committee Members and/or Committee counsel, with counsel for the interviewee present if the interviewee wished.

4. PROF Notes. Messages generated on a computer system used by the National Security Council staff. The exact time and date of the message are recorded.

5. *Tower. Report of the President's Special Review Board*, John Tower, Chairman (Washington: Government Printing Office, Feb. 26, 1987).

6. Letter and Number Codes. Source and Document File Codes for materials that have been assigned a Senate letter code and stamped page number. These materials are stored in the Committees' archives in Washington, D.C.

Preface

Origins of this Report

On November 3, 1986, Al-Shiraa, a Lebanese weekly, reported that the United States had secretly sold arms to Iran. Subsequent reports claimed that the purpose of the sales was to win the release of American hostages in Lebanon. These reports seemed unbelievable: Few principles of U.S. policy were stated more forcefully by the Reagan Administration than refusing to traffic with terrorists or sell arms to the Government of the Ayatollah Khomeini of Iran.

Although the Administration initially denied the reports, by mid-November it was clear that the accounts were true. The United States had sold arms to Iran and had hoped thereby to gain the release of American hostages in Lebanon. However, even though the Iranians received the arms, just as many Americans remained hostage as before. Three had been freed, but three more had been taken during the period of the sales.

There was still another revelation to come: on November 25 the Attorney General announced that proceeds from the Iran arms sales had been "diverted" to the Nicaraguan resistance at a time when U.S. military aid to the Contras was prohibited.

Iran and Nicaragua—twin thorns of U.S. foreign policy in the 1980s—were thus linked in a credibility crisis that raised serious questions about the adherence of the Administration to the Constitutional processes of Government.

The public and Members of Congress expressed deep concern over the propriety and legality of actions by the staff of the National Security Council (NSC) and other officers of the Government regarding both the arms sales and the secret assistance to the Contras.

The issue of U.S. support for the Contras was not new. The President and Congress had engaged in vigorous debate over the proper course of U.S. policy, and Congress had barred U.S. support of Contra military operations for almost 2 years. Subsequently, senior Administration officials had assured Committees of Congress repeatedly that the Administration was abiding by the law.

The Iran-Contra Affair, as it came to be known, carried such serious implications for U.S. foreign policy, and for the rule of law in a democracy, that the 100th Congress determined to undertake its own investigation of the Affair.

The inquiry formally began on January 6, 1987, when the Senate, by S. Res. 23, established the Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition. The next day, the House, by H. Res. 12, established the Select Committee to Investigate Covert Arms Transactions with Iran. The two Chambers charged their respective Committees with investigating four major areas: arms sales to Iran, the possible diversion of funds to aid the Contras, violations of Federal law, and the involvement of the NSC staff in the conduct of foreign policy.

The two Committees took the unprecedented step of merging their investigations and hearings and sharing all the information they obtained. The staffs of the two Committees worked together in reviewing more than 300,000 documents and interviewing or examining more than 500 witnesses. The Committees held 40 days of joint public hearings and several executive sessions. The two Committees then decided to combine their findings in a joint Report.

The conclusions in this Report are based on a record marred by inconsistent testimony and failure on the part of several witnesses to recall key matters and events. Moreover, a key witness—Director of Central Intelligence William J. Casey—died, and members of the NSC staff shredded relevant contemporaneous documents in the fall of 1986. Consequently, objective evidence that could have resolved the inconsistencies and overcome the failures of memory was denied to the Committees—and to history.

Under the American system, Government is accountable to the people. A public bipartisan investigation such as this one helps to ensure that the principle of accountability is enforced for all officials and policies. It strengthens the national commitment to the democratic values that have guided the United States for two centuries.

The President cooperated with the investigation. He did not assert executive privilege; he instructed all relevant agencies to produce their documents and witnesses; and he made extracts available from his personal diaries, although he rejected the Committees' request to refer to those entries in this Report on the ground that he did not wish to establish a precedent for future Presidents.

The Committees also received unprecedented cooperation from a sovereign nation, the State of Israel. Although not willing to allow its officials to be examined, the Government of Israel assembled and furnished the Committees with extensive materials and information, including information affecting its national security.

The Committees' investigation of the Iran-Contra Affair is not the first, following as it does the findings of the Senate Select Committee on Intelligence and the President's Special Review Board (known as the Tower Board); nor will it be the last, for the investigation of the Independent Counsel assigned to this matter continues.

But the Committees hope this Report will make a contribution by helping to explain what happened in the Iran-Contra Affair, and by helping to restore the public's confidence in this Nation's Constitutional system of Government.

Section I
The Report

Part I
Executive Summary

The full story of the Iran-Contra Affair is complicated, and, for this Nation, profoundly sad. In the narrative portion of this Report, the Committees present a comprehensive account of the facts, based on 10 months of investigation, including 11 weeks of hearings.

But the facts alone do not explain how or why the events occurred. In this Executive Summary, the Committees focus on the key issues and offer their conclusions. Minority, supplemental, and additional views are printed in Section II and Section III.

Summary of the Facts

The Iran-Contra Affair had its origin in two unrelated revolutions in Iran and Nicaragua.

In Nicaragua, the long-time President, General Anastasio Somoza Debayle, was overthrown in 1979 and replaced by a Government controlled by Sandinista leftists.

In Iran, the pro-Western Government of the Shah Mohammed Riza Pahlavi was overthrown in 1979 by Islamic fundamentalists led by the Ayatollah Khomeini. The Khomeini Government, stridently anti-American, became a supporter of terrorism against American citizens.

Nicaragua

United States policy following the revolution in Nicaragua was to encourage the Sandinista Government to keep its pledges of pluralism and democracy. However, the Sandinista regime became increasingly anti-American and autocratic; began to aid a leftist insurgency in El Salvador; and turned toward Cuba and the Soviet Union for political, military, and economic assistance. By December 1981, the United States had begun supporting the Nicaraguan Contras, armed opponents of the Sandinista regime.

The Central Intelligence Agency (CIA) was the U.S. Government agency that assisted the Contras. In accordance with Presidential decisions, known as Findings, and with funds appropriated by Congress, the CIA armed, clothed, fed, and supervised the Contras. Despite this assistance, the Contras failed to win widespread popular support or military victories within Nicaragua.

Although the President continued to favor support of the Contras, opinion polls indicated that a majority of the public was not supportive. Opponents of the Administration's policy feared that U.S. involvement with the Contras would embroil the United States in another Vietnam. Supporters of the policy feared that, without U.S. support for the Contras, the Soviets would gain a dangerous toehold in Central America.

Congress prohibited Contra aid for the purpose of overthrowing the Sandinista Government in fiscal year 1983, and limited all aid to the Contras in fiscal year 1984 to $24 million. Following disclosure in March and April 1984 that the CIA had a role in connection with the mining of the Nicaraguan harbors without adequate notification to Congress, public criticism mounted and the Administration's Contra policy lost much of its support within Congress. After further vigorous debate, Congress exercised its Constitutional power over appropriations and cut off all funds for the Contras' military and paramilitary operations. The statutory provision cutting off funds, known as the Boland Amendment, was part of a fiscal year 1985 omnibus appropriations bill, and was signed into law by the President on October 12, 1984.

Still, the President felt strongly about the Contras, and he ordered his staff, in the words of his National Security Adviser, to find a way to keep the Contras "body and soul together." Thus began the story of how the staff of a White House advisory body, the NSC, became an operational entity that secretly ran the Contra assistance effort, and later the Iran initiative. The action officer placed in charge of both operations was Lt. Col. Oliver L. North.

Denied funding by Congress, the President turned to third countries and private sources. Between June 1984 and the beginning of 1986, the President, his National Security Adviser, and the NSC staff secretly raised $34 million for the Contras from other countries. An additional $2.7 million was provided for the Contras during 1985 and 1986 from private contributors, who were addressed by North and occasionally granted photo opportunities with the President. In the middle of this period, Assistant Secretary of State A. Langhorne Motley—from whom these contributions were concealed—gave his assurance to Congress that the Administration was not "soliciting and/or encouraging third countries" to give funds to the Contras because, as he conceded, the Boland Amendment prohibited such solicitation.

The first contributions were sent by the donors to bank accounts controlled and used by the Contras. However, in July 1985, North took control of the funds and—with the support of two National Security Advisers (Robert McFarlane and John Poindexter) and, according to North, Director Casey—used those funds to run the covert operation to support the Contras.

At the suggestion of Director Casey, North recruited Richard V. Secord, a retired Air Force Major General with experience in special operations. Secord set up Swiss bank accounts, and North steered future donations into these accounts. Using these funds, and funds later generated by the Iran arms sales, Secord and his associate, Albert Hakim, created what they called "the Enterprise," a private organization designed to engage in covert activities on behalf of the United States.

The Enterprise, functioning largely at North's direction, had its own airplanes, pilots, airfield, operatives, ship, secure communications devices, and secret Swiss bank accounts. For 16 months, it served as the secret arm of the NSC staff, carrying out with private and non-appropriated money, and without the accountability or restrictions imposed by law on the CIA, a covert Contra aid program that Congress thought it had prohibited.

Although the CIA and other agencies involved in intelligence activities knew that the Boland Amendment barred their involvement in covert support for the Contras, North's Contra support operation received logistical and tactical support from various personnel in the CIA and other agencies. Certain CIA personnel in Central America gave their assistance. The U.S. Ambassador in Costa Rica, Lewis Tambs, provided his active assistance. North also enlisted the aid of Defense Department personnel in Central America, and obtained secure communications equipment from the National Security Agency. The Assistant Secretary of State with responsibility for the region, Elliott Abrams, professed ignorance of this support. He later stated that he had been "careful not to ask North lots of questions."

By Executive Order and National Security Decision Directive issued by President Reagan, all covert operations must be approved by the President personally and in writing. By statute, Congress must be notified about each covert action. The funds used for such actions, like all government funds, must be strictly accounted for.

The covert action directed by North, however, was not approved by the President in writing. Congress was not notified about it. And the funds to support it were never accounted for. In short, the operation functioned without any of the accountability required of Government activities. It was an evasion of the Constitution's most basic check on Executive action—the power of the Congress to grant or deny funding for Government programs.

Moreover, the covert action to support the Contras was concealed from Congress and the public. When the press reported in the summer of 1985 that the NSC staff was engaged in raising money and furnishing military support to the Contras, the President assured the public that the law was being followed. His National Security Adviser, Robert C. McFarlane, assured Committees of Congress, both in person and in writing, that the NSC staff was obeying both the spirit and the letter of the law, and was neither soliciting money nor coordinating military support for the Contras.

A year later, McFarlane's successor, Vice Admiral John M. Poindexter, repeated these assurances to Congressional Committees. Then, with Poindexter's blessing, North told the House Intelligence Committee he was involved neither in fundraising for, nor in providing military advice to, the Contras.

When one of Secord's planes was shot down over Nicaragua on October 5, 1986, the President and several administration spokesmen assured the public that the U.S. Government had no connection with the flight or the captured American crew member, Eugene Hasenfus. Several senior Government officials, including Elliott Abrams, gave similar assurances to Congress.

Two months later, McFarlane told Congressional Committees that he had no knowledge of contributions made by a foreign country, Country 2, to the Contras, when in fact McFarlane and the President had discussed and welcomed $32 million in contributions from that country. In addition, Abrams initially concealed from Congress—in testimony given to several Committees—that he had successfully solicited a contribution of $10 million from Brunei.

North conceded at the Committees' public hearings that he had participated in making statements to Congress that were "false," "misleading," "evasive and wrong."

During the period when the Administration was denying to Congress that it was involved in supporting the Contras' war effort, it was engaged in a campaign to alter public opinion and change the vote in Congress on Contra aid. Public funds were used to conduct public relations activities; and certain NSC staff members, using the prestige of the White House and the promise of meetings with the President, helped raise private donations both for media campaigns and for weapons to be used by the Contras.

Pursuant to a Presidential directive in 1983 the Administration adopted a "public diplomacy" program to promote the President's Central American policy. The program was conducted by an office in the State Department known as the Office for Public Diplomacy for Latin America and the Caribbean, (S/LPD). S/LPD's activities were coordinated not within the State Department, but by an interagency working group established by the NSC. The principal NSC staff officer was a former senior CIA official, with experience in covert operations, who had been detailed to the NSC staff for a year with Casey's approval, and who upon retirement from the CIA became a Special Assistant to the President with responsibility for public diplomacy matters.

S/LPD produced and widely disseminated a variety of pro-Contra publications and arranged speeches and press conferences. It also disseminated what one official termed "white propaganda": pro-Contra newspaper articles by paid consultants who did not disclose their connection to the Administration. Moreover, under a series of sole source contracts in 1985 and 1986, S/LPD paid more than $400,000 for pro Contra public relations work to International Business Communications (IBC), a company owned by Richard Miller, whose organization was described by one White House representative as a "White House outside the White House."

The Administration, like Members of Congress, may appeal directly to the people for support of its positions; and government agencies may legitimately disseminate information and educational materials to the public. However, by law appropriated funds may not be used to generate propaganda "designed to influence a Member of Congress;" and by law, as interpreted by the Office of the Comptroller General, appropriated funds may not be used by the State Department for "covert" propaganda activities. A GAO report concluded that S/LPD's white propaganda activities violated the ban on arranging "covert propaganda."

Private funds were also used. North and Miller helped Carl R. "Spitz" Channell raise $10 million, most of which went to Channell's tax-exempt organization, the National Endowment for the Preservation of Liberty ("NEPL"). They arranged numerous "briefings" at the White House complex on Central America by Administration officials for groups of potential contributors. Following these briefings, Channell reconvened the groups at the Hay-Adams Hotel, and made a pitch for tax-deductible contributions to NEPL's Central America "public education" program or, in some individual cases, for weapons. Channell's major contributors were given private briefings by North, and were afforded private visits and photo sessions with the President. On one occasion, President Reagan participated in a briefing.

Using the donated money, Channell ran a series of television advertisements in 1985 and 1986, some of which were directed at television markets covering the home districts of Congressmen considered to be "swing" votes on Contra aid. One series of advertisements was used to attack Congressman Mike Barnes, a principal opponent of Contra aid, and one of the Congressmen to whom Administration officials had denied violating the Boland Amendment in September of 1985. Channell later boasted to North that he had "participated in a campaign to ensure Congressman Barnes' defeat."

Of the $10 million raised by North, Channell and Miller, more than $1 million was used for pro-Contra publicity. Approximately $2.7 million was sent through IBC and off-shore accounts of another Miller-controlled company to Secord's Swiss accounts, or to Calero's account in Miami. Most of the remainder was spent on salaries and expenses for Channell, Miller and their business associates.

NEPL's charter did not contemplate raising funds for a covert war in Nicaragua, and the Internal Revenue Service never approved such activity when NEPL was granted exempt status. As a consequence, Channell and Miller have each pleaded guilty to the crime of conspiring to defraud the United States Treasury of revenues "by subverting and corrupting the lawful purposes of NEPL." Channell named North as a co-conspirator.

In private fundraising, as in the "white propaganda" campaign, the goal of supporting the Contras was allowed to override sensitivity to law and to accepted norms of behavior.

Iran

The NSC staff was already engaged in covert operations through Secord when, in the summer of 1985, the Government of Israel proposed that missiles be sold to Iran in return for the release of seven American hostages held in Lebanon and the prospect of improved relations with Iran. The Secretaries of State and Defense repeatedly opposed such sales to a government designated by the United States as a supporter of international terrorism. They called it a straight arms-for-hostages deal that was contrary to U.S. public policy. They also argued that these sales would violate the Arms Export Control Act, as well as the U.S. arms embargo against Iran. The embargo had been imposed after the taking of hostages at the U.S. Embassy in Tehran on November 4, 1979, and was continued because of the Iran-Iraq war.

Nevertheless, in the summer of 1985 the President authorized Israel to proceed with the sales. The NSC staff conducting the Contra covert action also took operational control of implementing the President's decision on arms sales to Iran. The President did not sign a Finding for this covert operation, nor did he notify the Congress.

Israel shipped 504 TOW anti-tank missiles to Iran in August and September 1985. Although the Iranians had promised to release most of the American hostages in return, only one, Reverend Benjamin Weir, was freed. The President persisted. In November, he authorized Israel to ship 80 HAWK antiaircraft missiles in return for all the hostages, with a promise of prompt replenishment by the United States, and 40 more HAWKs to be sent directly by the United States to Iran. Eighteen HAWK missiles were actually shipped from Israel in November 1985, but no hostages were released.

In early December 1985, the President signed a retroactive Finding purporting to authorize the November HAWK transaction. That Finding contained no reference to improved relations with Iran. It was a straight arms-for-hostages Finding. National Security Adviser Poindexter destroyed this Finding a year later because, he testified, its disclosure would have been politically embarrassing to the President.

The November HAWK transaction had additional significance. The Enterprise received a $1 million advance from the Israelis. North and Secord testified this was for transportation expenses in connection with the 120 HAWK missiles. Since only 18 missiles were shipped, the Enterprise was left with more than $800,000 in spare cash. North directed the Enterprise to retain the money and spend it for the Contras. The "diversion" had begun.

North realized that the sale of missiles to Iran could be used to support the Contras. He told Israeli Defense Ministry officials on December 6, 1985, one day after the President signed the Finding, that he planned to generate profits on future arms sales for activities in Nicaragua.

On December 7, 1985, the President and his top advisers met again to discuss the arms sales. Secretaries Shultz and Weinberger objected vigorously once more, and Weinberger argued that the sales would be illegal. After a meeting in London with an Iranian interlocutor and the Israelis, McFarlane recommended that the sales be halted. Admiral John Poindexter (the new National Security Adviser), and Director Casey were of the opposite opinion.

The President decided to go forward with the arms sales to get the hostages back. He signed a Finding on January 6, 1986, authorizing more shipments of missiles for the hostages. When the CIA's General Counsel pointed out that authorizing Israel to sell its U.S.-manufactured weapons to Iran might violate the Arms Export Control Act, the President, on the legal advice of the Attorney General, decided to authorize direct shipments of the missiles to Iran by the United States and signed a new Finding on January 17, 1986. To carry out the sales, the NSC staff turned once again to the Enterprise.

Although North had become skeptical that the sales would lead to the release of all the hostages or a new relationship with Iran, he believed that the prospect of generating funds for the Contras was "an attractive incentive" for continuing the arms sales. No matter how many promises the Iranians failed to keep throughout this secret initiative, the arms sales continued to generate funds for the Enterprise, and North and his superior, Poindexter, were consistent advocates for their continuation. What North and Poindexter asserted in their testimony that they did not know, however, was that most of these arms sales profits would remain with the Enterprise and never reach the Contras.

In February 1986, the United States, acting through the Enterprise, sold 1,000 TOWs to the Iranians. The U.S. also provided the Iranians with military intelligence about Iraq. All of the remaining American hostages were supposed to be released upon Iran's receipt of the first 500 TOWs. None was. But the transaction was productive in one respect. The difference between what the Enterprise paid the United States for the missiles and what it received from Iran was more than $6 million. North directed part of this profit for the Contras and for other covert operations. Poindexter testified that he authorized this "diversion."

The diversion, for the Contras and other covert activities, was not an isolated act by the NSC staff. Poindexter saw it as "implementing" the President's secret policy that had been in effect since 1984 of using non-appropriated funds following passage of the Boland Amendment.

According to North, CIA Director Casey saw the "diversion" as part of a more grandiose plan to use the Enterprise as a "stand-alone," "off-the-shelf," covert capacity that would act throughout the world while evading Congressional review. To Casey, Poindexter, and North, the diversion was an integral part of selling arms to Iran and just one of the intended uses of the proceeds.

In May 1986, the President again tried to sell weapons to get the hostages back. This time, the President agreed to ship parts for HAWK missiles but only on condition that all the American hostages in Lebanon be released first. A mission headed by Robert McFarlane, the former National Security Adviser, traveled to Tehran with the first installment of the HAWK parts. When the mission arrived, McFarlane learned that the Iranians claimed they had never promised to do anything more than try to obtain the hostages' release. The trip ended amid misunderstanding and failure, although the first installment of HAWK parts was delivered.

The Enterprise was paid, however, for all of the HAWK parts, and realized more than an $8 million profit, part of which was applied, at North's direction, to the Contras. Another portion of the profit was used by North for other covert operations, including the operation of a ship for a secret mission. The idea of an off-the-shelf, stand-alone covert capacity had become operational.

On July 26, 1986, another American hostage, Father Lawrence Jenco, was released. Despite all the arms sales, he was only the second hostage freed, and the first since September 1985. Even though McFarlane had vowed at the Tehran meeting not to deliver the remainder of the HAWK parts until all the hostages were released, the Administration capitulated again. The balance of the HAWK parts was shipped when Father Jenco was released.

In September and October 1986, the NSC staff began negotiating with a new group of Iranians, the "Second Channel," that Albert Hakim had opened, in part, through promises of bribes. Although these Iranians allegedly had better contacts with Iranian officials, they, in fact, represented the same principals as did the First Channel and had the same arrangement in mind: missiles for hostages. Once again, the Administration insisted on release of all the hostages but settled for less.

In October, after a meeting in London, North left Hakim to negotiate with the Iranians. Hakim made no secret of his desire to make large profits for himself and General Secord in the $15 billion-a-year Iranian market if relations with the United States could be restored. Thus, he had every incentive to make an agreement, whatever concessions might be required.

As an unofficial "ambassador" selected by North and Secord, Hakim produced a remarkable nine-point plan, subsequently approved by North and Poindexter, under which the United States would receive "one and one half" hostages (later reduced to one). Under the plan, the United States agreed not only to sell the Iranians 500 more TOWs, but Secord and Hakim promised to develop a plan to induce the Kuwaiti Government to release the Da'wa prisoners. (Seventeen Kuwaiti prisoners, connected to "al-Dawa," an Iranian revolutionary group, had been convicted and imprisoned for their part in the December 12, 1983, attacks in Kuwait on the U.S. Embassy, a U.S. civilian compound, the French Embassy, and several Kuwaiti Goverment facilities.) The plan to obtain the release of the Da'wa prisoners did not succeed, but the TOW missiles were sold for use by the Iranian Revolutionary Guard. Following the transfer of these TOWs, a third hostage, David Jacobsen, was released on November 2, 1986, and more profit was generated for the Enterprise.

Poindexter testified that the President approved the nine-point plan. But other testimony raises questions about this assertion. Regardless of what Poindexter may have told the President, Secretary Shultz testified that when he informed the President on December 14, 1986, that the nine-point plan included a promise about the release of the Da'wa prisoners in Kuwait, the President reacted with shock, "like he had been kicked in the belly."

During the negotiations with the Second Channel, North and Secord told the Iranians that the President agreed with their position that Iraq's President, Saddam Hussein, had to be removed and further agreed that the United States would defend Iran against Soviet aggression. They did not clear this with the President and their representations were flatly contrary to U.S. policy.

The decision to designate private parties—Secord and Hakim—to carry out the arms transactions had other ramifications. First, there was virtually no accounting for the profits from the arms deals. Even North claimed that he did not know how Secord and Hakim actually spent the money committed to their custody. The Committees' investigation revealed that of the $16.1 million profit from the sales of arms to Iran only about $3.8 million went to support the Contras (the amount representing "the diversion"). All told, the Enterprise received nearly $48 million from the sale of arms to the Contras and Iran, and in contributions directed to it by North. A total of $16.5 million was used to support the Contras or to purchase the arms sold to (and paid for by) the Contras; $15.2 million was spent on Iran; Hakim, Secord, and their associate, Thomas Clines, took $6.6 million in commissions and other profit distributions; almost $1 million went for other covert operations sponsored by North; $4.2 million was held in "reserves" for use in future operations; $1.2 million remained in Swiss bank accounts of the Enterprise; and several thousand dollars were used to pay for a security system at North's residence.

Second, by permitting private parties to conduct the arms sales, the Administration risked losing control of an important foreign policy initiative. Private citizens—whose motivations of personal gain could conflict with the interests of this country—handled sensitive diplomatic negotiations, and purported to commit the United States to positions that were anathema to the President's public policy and wholly unknown to the Secretary of State.

The Coverup

The sale of arms to Iran was a "significant anticipated intelligence activity." By law, such an activity must be reported to Congress "in a timely fashion" pursuant to Section 501 of the National Security Act. If the proposal to sell arms to Iran had been reported, the Senate and House Intelligence Committees would likely have joined Secretaries Shultz and Weinberger in objecting to this initiative. But Poindexter recommended—and the President decided—not to report the Iran initiative to Congress.

Indeed, the Administration went to considerable lengths to avoid notifying Congress. The CIA General Counsel wrote on January 15, 1986, "the key issue in this entire matter revolves around whether or not there will be reports made to Congress." Shortly thereafter, the transaction was restructured to avoid the pre-shipment reporting requirements of the Arms Export Control Act, and place it within the more limited reporting requirements of the National Security Act. But even these reporting requirements were ignored. The President failed to notify the group of eight (the leaders of each party in the House and Senate, and the Chairmen and Ranking Minority Members of the Intelligence Committees) specified by law for unusually sensitive operations.

After the disclosure of the Iran arms sales on November 3, 1986, the American public was still not told the facts. The President sought to avoid any comment on the ground that it might jeopardize the chance of securing the remaining hostages' release. But it was impossible to remain silent, and inaccurate statements followed.

In his first public statement on the subject on November 6, the President said that the reports concerning the arms sales had "no foundation." A week later, on November 13, the President conceded that the United States had sold arms, but branded as "utterly false" allegations that the sales were in return for the release of the hostages. The President also maintained that there had been no violations of Federal law.

At his news conference on November 19, 1986, he denied that the United States was involved in the Israeli sales that occurred prior to the January 17, 1986 Finding. The President was asked:

> Mr. President . . . are you telling us tonight that the only shipments with which we were involved were the one or two that followed your January 17 Finding and that . . . there were no other shipments which the U.S. condoned?

The President replied:

> That's right. I'm saying nothing, but the missiles we sold.

And, on November 25, 1986, the Attorney General—with the President at his side—announced at a press conference that the President did not know of the Israeli shipments until after they had occurred. He stated that the President learned of the November 1985 HAWK shipment in February 1986.

In fact, however, the Israeli sales, including the HAWK shipment, were implemented with the knowledge and approval of the President and his top advisers; and the President himself told Shultz on the day of his press conference that he had known of the November 1985 shipment when it occurred. McFarlane, Poindexter, and North were intimately involved in the Israeli shipments; and the CIA had actually transported one delivery from Israel to Iran.

While the President was denying any illegality, his subordinates were engaging in a coverup. Several of his advisers had expressed concern that the 1985 sales violated the Arms Export Control Act, and a "cover story" had been agreed on if these arms sales were ever exposed. After North had three conversations on November 18, 1986, about the legal problems with the 1985 Israeli shipments, he, Poindexter, Casey, and McFarlane all told conforming false stories about U.S. involvement in these shipments.

With McFarlane's help, North rewrote NSC staff chronologies on November 19 and 20, 1986, in such a way that they denied contemporaneous knowledge by the Administration of Israel's shipments to Iran in 1985. They asserted at one point that the U.S. Government believed the November 1985 shipment consisted of oil-drilling equipment, not arms.

Poindexter told Congressional Committees on November 21, 1986, that the United States had disapproved of the Israeli shipments and that, until the day before his briefing, he believed that Administration officials did not know about any of them until after they had occurred. He then destroyed the only Finding signed by the President that showed the opposite.

Casey told Congressional Committees on November 21, 1986, that although a CIA proprietary airline had actually carried missiles to Iran from Israel in 1985, the proprietary had been told the cargo was "oil-drilling equipment."

McFarlane told the Attorney General on November 21, 1986, that the Israelis said they were shipping oil-drilling equipment in November 1985 and that McFarlane did not learn otherwise until May 1986.

On learning that the President had authorized the Attorney General to gather the relevant facts, North and Poindexter shredded and altered official documents on November 21, 1986, and later that weekend. On November 25, 1986, North's secretary concealed classified documents in her clothing and, with North's knowledge, removed them from the White House.

According to North, a "fall guy" plan was proposed by Casey in which North and, if necessary, Poindexter, would take the responsibility for the covert Contra support operation and the diversion. On Saturday November 22, 1986, in the midst of these efforts to conceal what had happened, Poindexter had a two and one half hour lunch with Casey. Yet Poindexter could not recall anything that was discussed.

North testified that he assured Poindexter that he had destroyed all documents relating to the diversion. The diversion nevertheless was discovered on November 22, 1986, when a Justice Department official, assisting the Attorney General's fact-finding inquiry, found a "diversion memorandum" that had escaped the shredder.

Prior to the discovery of the diversion memorandum, each interview by the Attorney General's fact finding team had been conducted in the presence of two witnesses, and careful notes were taken in accordance with standard professional practices. After discovery of the diversion memorandum—which itself gave rise to an inference of serious wrongdoing—the Attorney General departed from these standard practices. A series of important interviews—Poindexter, McFarlane, Casey, Regan, and Bush—was conducted by the Attorney General alone, and no notes were made.

The Attorney General then announced at his November 25 press conference that the diversion had occurred and that the President did not know of it. But he made several incorrect statements about his own investigation. He stated that the President had not known of the Israeli pre-Finding shipments, and he stated that the proceeds of the arms sales had been sent directly from the Israelis to the Contras. These statements were both mistaken and inconsistent with information that had been received during the Attorney General's fact-finding inquiry.

Poindexter testified to these Committees that the President did not know of the diversion. North testified that while he assumed the President had authorized each diversion, Poindexter told him on November 21, 1986, that the President had never been told of the diversion.

In light of the destruction of material evidence by Poindexter and North and the death of Casey, all of the facts may never be known. The Committees cannot even be sure whether they heard the whole truth or whether Casey's "fall guy" plan was carried out at the public hearings. But enough is clear to demonstrate beyond doubt that fundamental processes of governance were disregarded and the rule of law was subverted.

Findings and Conclusions

The common ingredients of the Iran and Contra policies were secrecy, deception, and disdain for the law. A small group of senior officials believed that they alone knew what was right. They viewed knowledge of their actions by others in the Government as a threat to their objectives. They told neither the Secretary of State, the Congress nor the American people of their actions. When exposure was threatened, they destroyed official documents and lied to Cabinet officials, to the public, and to elected representatives in Congress. They testified that they even withheld key facts from the President.

The United States Constitution specifies the process by which laws and policy are to be made and executed. Constitutional process is the essence of our democracy and our democratic form of Government is the basis of our strength. Time and again we have learned that a flawed process leads to bad results, and that a lawless process leads to worse.

Policy Contradictions and Failures

The Administration's departure from democratic processes created the conditions for policy failure, and led to contradictions which undermined the credibility of the United States.

The United States simultaneously pursued two contradictory foreign policies—a public one and a secret one:

—The public policy was not to make any concessions for the release of hostages lest such concessions encourage more hostage-taking. At the same time, the United States was secretly trading weapons to get the hostages back.

—The public policy was to ban arms shipments to Iran and to exhort other Governments to observe this embargo. At the same time, the United States was secretly selling sophisticated missiles to Iran and promising more.

—The public policy was to improve relations with Iraq. At the same time, the United States secretly shared military intelligence on Iraq with Iran and North told the Iranians in contradiction to United States policy that the United States would help promote the overthrow of the Iraqi head of government.

—The public policy was to urge all Governments to punish terrorism and to support, indeed encourage, the refusal of Kuwait to free the Da'wa prisoners who were convicted of terrorist acts. At the same time, senior officials secretly endorsed a Secord-Hakim plan to permit Iran to obtain the release of the Da'wa prisoners.

—The public policy was to observe the "letter and spirit" of the Boland Amendment's proscriptions against military or paramilitary assistance to the Contras. At the same time, the NSC staff was secretly assuming direction and funding of the Contras' military effort.

—The public policy, embodied in agreements signed by Director Casey, was for the Administration to consult with the Congressional oversight committees about covert activities in a "new spirit of frankness and cooperation." At the same time, the CIA and the White House were secretly withholding from those Committees all information concerning the Iran initiative and the Contra support network.

—The public policy, embodied in Executive Order 12333, was to conduct covert operations solely through the CIA or other organs of the intelligence community specifically authorized by the President. At the same time, although the the NSC was not so authorized, the NSC staff secretly became operational and used private, non-accountable agents to engage in covert activities.

These contradictions in policy inevitably resulted in policy failure:

—The United States armed Iran, including its most radical elements, but attained neither a new relationship with that hostile regime nor a reduction in the number of American hostages.

—The arms sales did not lead to a moderation of Iranian policies. Moderates did not come forward, and Iran to this day sponsors actions directed against the United States in the Persian Gulf and elsewhere.

—The United States opened itself to blackmail by adversaries who might reveal the secret arms sales and who, according to North, threatened to kill the hostages if the sales stopped.

—The United States undermined its credibility with friends and allies, including moderate Arab states, by its public stance of opposing arms sales to Iran while undertaking such arms sales in secret.

—The United States lost a $10 million contribution to the Contras from the Sultan of Brunei by directing it to the wrong bank account—the result of an improper effort to channel that humanitarian aid contribution into an account used for lethal assistance.

—The United States sought illicit funding for the Contras through profits from the secret arms sales, but a substantial portion of those profits ended up in the personal bank accounts of the private individuals executing the sales—while the exorbitant amounts charged for the weapons inflamed the Iranians with whom the United States was seeking a new relationship.

Flawed Policy Process

The record of the Iran-Contra Affair also shows a seriously flawed policymaking process.

Confusion

There was confusion and disarray at the highest levels of Government.

—McFarlane embarked on a dangerous trip to Tehran under a complete misapprehension. He thought the Iranians had promised to secure the release of all hostages before he delivered arms, when in fact they had promised only to seek the hostages' release, and then only after one planeload of arms had arrived.

—The President first told the Tower Board that he had approved the initial Israeli shipments. Then, he told the Tower Board that he had not. Finally, he told the Tower Board that he does not know whether he approved the initial Israeli arms shipments, and his top advisers disagree on the question.

—The President claims he does not recall signing a Finding approving the November 1985 HAWK shipment to Iran. But Poindexter testified that the President did sign a Finding on December 5, 1985, approving the shipment retroactively. Poindexter later destroyed the Finding to save the President from embarassment.

—That Finding was prepared without adequate discussion and stuck in Poindexter's safe for a year; Poindexter claimed he forgot about it; the White House asserts the President never signed it; and when events began to unravel, Poindexter ripped it up.

—The President and the Attorney General told the public that the President did not know about the November 1985 Israeli HAWK shipment until February 1986—an error the White House Chief of Staff explained by saying that the preparation for the press conference "sort of confused the Presidential mind."

—Poindexter says the President would have approved the diversion, if he had been asked; and the President says he would not have.

—One National Security Adviser understood that the Boland Amendment applied to the NSC; another thought it did not. Neither sought a legal opinion on the question.

—The President incorrectly assured the American people that the NSC staff was adhering to the law and that the Government was not connected to the Hasenfus airplane. His staff was in fact conducting a "full service" covert operation to support the Contras which they believed he had authorized.

—North says he sent five or six completed memorandums to Poindexter seeking the President's approval for the diversion. Poindexter does not remember receiving any. Only one has been found.

Dishonesty and Secrecy

The Iran-Contra Affair was characterized by pervasive dishonesty and inordinate secrecy.

North admitted that he and other officials lied repeatedly to Congress and to the American people about the Contra covert action and Iran arms sales, and that he altered and destroyed official documents. North's testimony demonstrates that he also lied to members of the Executive branch, including the Attorney General, and officials of the State Department, CIA and NSC.

Secrecy became an obsession. Congress was never informed of the Iran or the Contra covert actions, notwithstanding the requirement in the law that Congress be notified of all covert actions in a "timely fashion."

Poindexter said that Donald Regan, the President's Chief of Staff, was not told of the NSC staff's fundraising activities because he might reveal it to the press. Secretary Shultz objected to third-country solicitation in 1984 shortly before the Boland Amendment was adopted; accordingly, he was not told that, in the same time period, the National Security Adviser had accepted an $8 million contribution from Country 2 even though the State Department had prime responsibility for dealings with that country. Nor was the Secretary of State told by the President in February 1985 that the same country had pledged another $24 million—even though the President briefed the Secretary of State on his meeting with the head of state at which the pledge was made. Poindexter asked North to keep secrets from Casey; Casey, North, and Poindexter agreed to keep secrets from Shultz.

Poindexter and North cited fear of leaks as a justification for these practices. But the need to prevent public disclosure cannot justify the deception practiced upon Members of Congress and Executive branch officials by those who knew of the arms sales to Iran and of the Contra support network. The State and Defense Departments deal each day with the most sensitive matters affecting millions of lives here and abroad. The Congressional Intelligence Committees receive the most highly classified information, including information on covert activities. Yet, according to North and Poindexter, even the senior officials of these bodies could not be entrusted with the NSC staff's secrets because they might leak.

While Congress's record in maintaining the confidentiality of classified information is not unblemished, it is not nearly as poor or perforated as some members of the NSC staff maintained. If the Executive branch has any basis to suspect that any member of the Intelligence Committees breached security, it has the obligation to bring that breach to the attention of the House and Senate Leaders—not to make blanket accusations. Congress has the capability and responsibility of protecting secrets entrusted to it. Congress cannot fulfill its legislative responsibilities if it is denied information because members of the Executive branch, who place their faith in a band of international arms merchants and financiers, unilaterally declare Congress unworthy of trust.

In the case of the "secret" Iran arms-for-hostages deal, although the NSC staff did not inform the Secretary of State, the Chairman of the Joint Chiefs of Staff, or the leadership of the United States Congress, it was content to let the following persons know:

—Manucher Ghorbanifar, who flunked every polygraph test administered by the U.S. Government;

—Iranian officials, who daily denounced the United States but received an inscribed Bible from the President;

—Officials of Iran's Revolutionary Guard, who received the U.S. weapons;

—Secord and Hakim, whose personal interests could conflict with the interests of the United States;

—Israeli officials, international arms merchants, pilots and air crews, whose interests did not always coincide with ours; and

—An unknown number of shadowy intermediaries and financiers who assisted with both the First and Second Iranian Channels.

While sharing the secret with this disparate group, North ordered the intelligence agencies not to disseminate intelligence on the Iran initiative to the Secretaries of State and Defense. Poindexter told the Secretary of State in May 1986 that the Iran initiative was over, at the very time the McFarlane mission to Tehran was being launched. Poindexter also concealed from Cabinet officials the remarkable nine-point agreement negotiated by Hakim with the Second Channel. North assured the FBI liaison to the NSC as late as November 1986 that the United States was not bargaining for the release of hostages but seizing terrorists to exchange for hostages—a complete fabrication. The lies, omissions, shredding, attempts to rewrite history—all continued, even after the President authorized the Attorney General to find out the facts.

It was not operational security that motivated such conduct—not when our own Government was the victim. Rather, the NSC staff feared, correctly, that any disclosure to Congress or the Cabinet of the arms-for-hostages and arms-for-profit activities would produce a storm of outrage.

As with Iran, Congress was misled about the NSC staff's support for the Contras during the period of the Boland Amendment, although the role of the NSC staff was no secret to others. North testified that his operation was well-known to the press in the Soviet Union, Cuba, and Nicaragua. It was not a secret from Nicaragua's neighbors, with whom the NSC staff communicated throughout the period. It was not a secret from the third countries—including a totalitarian state—from whom the NSC staff sought arms or funds. It was not a secret from the private resupply network which North recruited and supervised. According to North, even Ghorbanifar knew.

The Administration never sought to hide its desire to assist the Contras so long as such aid was authorized by statute. On the contrary, it wanted the Sandinistas to know that the United States supported the Contras. After enactment of the Boland Amendment, the Administration repeatedly and publicly called upon Congress to resume U.S. assistance. Only the NSC staff's Contra support activities were kept under wraps. The Committees believe these actions were concealed in order to prevent Congress from learning that the Boland Amendment was being circumvented.

It was stated on several occasions that the confusion, secrecy and deception surrounding the aid program for the Nicaraguan freedom fighters was produced in part by Congress' shifting positions on Contra aid.

But Congress' inconsistency mirrored the chameleon-like nature of the rationale offered for granting assistance in the first instance. Initially, Congress was told that our purpose was simply to interdict the flow of weapons from Nicaragua into El Salvador. Then Congress was told that our purpose was to harrass the Sandinistas to prevent them from consolidating their power and exporting their revolution. Eventually, Congress was told that our purpose was to eliminate all foreign forces from Nicaragua, to reduce the size of the Sandinista armed forces, and to restore the democratic reforms pledged by the Sandinistas during the overthrow of the Somoza regime.

Congress had cast a skeptical eye upon each rationale proffered by the Administration. It suspected that the Administration's true purpose was identical to that of the Contras—the overthrow of the Sandinista regime itself. Ultimately Congress yielded to domestic political pressure to discontinue assistance to the Contras, but Congress was unwilling to bear responsibility for the loss of Central America to communist military and political forces. So Congress compromised, providing in 1985 humanitarian aid to the Contras; and the NSC staff provided what Congress prohibited: lethal support for the Contras.

Compromise is no excuse for violation of law and deceiving Congress. A law is no less a law because it is passed by a slender majority, or because Congress is open-minded about its reconsideration in the future.

Privatization

The NSC staff turned to private parties and third countries to do the Government's business. Funds denied by Congress were obtained by the Administration from third countries and private citizens. Activities normally conducted by the professional intelligence services—which are accountable to Congress—were turned over to Secord and Hakim.

The solicitation of foreign funds by an Administration to pursue foreign policy goals rejected by Congress is dangerous and improper. Such solicitations, when done secretly and without Congressional authorization, create a risk that the foreign country will expect and demand something in return. McFarlane testified that "any responsible official has an obligation to acknowledge that every country in the world will see benefit to itself by ingratiating itself to the United States." North, in fact, proposed rewarding a Central American country with foreign assistance funds for facilitating arms shipments to the Contras. And Secord, who had once been in charge of the U.S. Air Force's foreign military sales, said "where there is a quid, there is a quo."

Moreover, under the Constitution only Congress can provide funds for the Executive branch. The Framers intended Congress's "power of the purse" to be one of the principal checks on Executive action. It was designed, among other things, to prevent the

Executive from involving this country unilaterally in a foreign conflict. The Constitutional plan does not prohibit a President from asking a foreign state, or anyone else, to contribute funds to a third party. But it does prohibit such solicitation where the United States exercises control over their receipt and expenditure. By circumventing Congress' power of the purse through third-country and private contributions to the Contras, the Administration undermined a cardinal principle of the Constitution.

Further, by turning to private citizens, the NSC staff jeopardized its own objectives. Sensitive negotiations were conducted by parties with little experience in diplomacy, and financial interests of their own. The diplomatic aspect of the mission failed—the United States today has no long-term relationship with Iran and no fewer hostages in captivity. But the private financial aspect succeeded—Secord and Hakim took $4.4 million in commissions and used $2.2 million more for their personal benefit; in addition, they set aside reserves of over $4 million in Swiss bank accounts of the Enterprise.

Covert operations of this Government should only be directed and conducted by the trained professional services that are accountable to the President and Congress. Such operations should never be delegated, as they were here, to private citizens in order to evade Governmental restrictions.

Lack of Accountability

The confusion, deception, and privatization which marked the Iran-Contra Affair were the inevitable products of an attempt to avoid accountability. Congress, the Cabinet, and the Joint Chiefs of Staff were denied information and excluded from the decision-making process. Democratic procedures were disregarded.

Officials who make public policy must be accountable to the public. But the public cannot hold officials accountable for policies of which the public is unaware. Policies that are known can be subjected to the test of reason, and mistakes can be corrected after consultation with the Congress and deliberation within the Executive branch itself. Policies that are secret become the private preserve of the few, mistakes are inevitably perpetuated, and the public loses control over Government. That is what happened in the Iran-Contra Affair:

—The President's NSC staff carried out a covert action in furtherance of his policy to sustain the Contras, but the President said he did not know about it.

—The President's NSC staff secretly diverted millions of dollars in profits from the Iran arms sales to the Contras, but the President said he did not know about it and Poindexter claimed he did not tell him.

—The Chairman of the Joint Chiefs of Staff was not informed of the Iran arms sales, nor was he ever consulted regarding the impact of such sales on the Iran-Iraq war or on U.S. military readiness.

—The Secretary of State was not informed of the millions of dollars in Contra contributions solicited by the NSC staff from foreign governments with which the State Department deals each day.

—Congress was told almost nothing—and what it was told was false.

Deniability replaced accountability. Thus, Poindexter justified his decision not to inform the President of the diversion on the ground that he wanted to give the President "deniability." Poindexter said he wanted to shield the President from political embarrassment if the diversion became public.

This kind of thinking is inconsistent with democratic governance. "Plausible denial," an accepted concept in intelligence activities, means structuring an authorized covert operation so that, if discovered by the party against whom it is directed, United States involvement may plausibly be denied. That is a legitimate feature of authorized covert operations. In no circumstance, however, does "plausible denial" mean structuring an operation so that it may be concealed from—or denied to—the highest elected officials of the United States Government itself.

The very premise of democracy is that "we the people" are entitled to make our own choices on fundamental policies. But freedom of choice is illusory if policies are kept, not only from the public, but from its elected representatives.

Intelligence Abuses

Covert Operations

As former National Security Adviser Robert McFarlane testified, "it is clearly unwise to rely on covert action as the core of our policy." The Government cannot keep a policy secret and still secure the public support necessary to sustain it. Yet it was precisely because the public would not support the Contra policy, and was unlikely to favor arms deals with Iran, that the NSC staff went underground. This was a perversion of the proper concept of covert operations:

—Covert operations should be conducted in accordance with strict rules of accountability and oversight. In the mid-1970s, in response to disclosures of abuses within the intelligence community, the Government enacted a series of safeguards. Each covert action was to be approved personally by the President, funded by Congressional appropriations, and Congress was to be informed.

In the Iran-Contra Affair, these rules were violated. The President, according to Poindexter, was never informed of the diversion. The President says he knew nothing of the covert action to support the Contras, or the companies funded by non-appropriated monies set up by North to carry out that support. Congress was not notified of either the Iran or the Contra operations.

—Covert actions should be consistent with publicly defined U.S. foreign policy goals. Because covert operations are secret by definition, they are of course not openly debated or publicly approved. So long as the policies which they further are known, and so long as they are conducted in accordance with law, covert operations are acceptable. Here, however, the Contra covert operation was carried out in violation of the country's public policy as expressed in the Boland Amendment; and the Iran covert operation was carried out in violation of the country's stated policy against selling arms to Iran or making concessions to terrorists. These were not covert actions, they were covert policies; and covert policies are incompatible with democracy.

—Finally, covert operations are intended to be kept from foreign powers, not from the Congress and responsible Executive agencies within the United States Government itself. As Clair George, CIA Director of Operations, testified: "to think that because we deal in lies, and overseas we may lie and we may do other such things, that therefore that gives you some permission, some right or some particular reason to operate that way with your fellow employees, I would not only disagree with that I would say it would be the destruction of a secret service in a democracy." In the Iran-Contra Affair, secrecy was used to justify lies to Congress, the Attorney General, other Cabinet officers, and the CIA. It was used not as a shield against our adversaries, but as a weapon against our own democratic institutions.

The NSC Staff

The NSC staff was created to give the President policy advice on major national security and foreign policy issues. Here, however, it was used to gather intelligence and conduct covert operations. This departure from its proper functions contributed to policy failure.

During the Iran initiative, the NSC staff became the principal body both for gathering and coordinating intelligence on Iran and for recommending policy to the President. The staff relied on Iranians who were interested only in buying arms, including Ghorbanifar, whom CIA officials regarded as a fabricator. Poindexter, in recommending to the President the sale of weapons to Iran, gave as one of his reasons that Iraq was winning the Gulf war. That assessment was contrary to the views of intelligence professionals at the State Department, the Department of Defense, and the CIA, who had concluded as early as 1983 that Iran was winning the war. Casey, who collaborated with North and Poindexter on the Iran and Contra programs, also tailored intelligence reports to the positions he advocated. The record shows that the President believed and acted on these erroneous reports.

Secretary Shultz pointed out that the intelligence and policy functions do not mix, because "it is too tempting to have your analysis on the selection of information that is presented favor the policy that you are advocating." The Committees agree on the need to separate the intelligence and policy functions. Otherwise, there is too great a risk that the interpretation of intelligence will be skewed to fit predetermined policy choices.

In the Iran-Contra Affair, the NSC staff not only combined intelligence and policy functions, but it became operational and conducted covert operations. As the CIA was subjected to greater Congressional scrutiny and regulation, a few Administration officials—including even Director Casey—came to believe that the CIA could no longer be utilized for daring covert operations. So the NSC staff was enlisted to provide assistance in covert operations that the CIA could not or would not furnish.

This was a dangerous misuse of the NSC staff. When covert operations are conducted by those on whom the President relies to present policy options, there is no agency in government to objectively scrutinize, challenge and evaluate plans and activities. Checks and balances are lost. The high policy decisions confronting a President can rarely be resolved by the methods and techniques used by experts in the conduct of covert operations. Problems of public policy must be dealt with through consultation, not Poindexter's "compartmentation"; with honesty and confidentiality, not deceit.

The NSC was created to provide candid and comprehensive advice to the President. It is the judgment of these Committees that the NSC staff should never again engage in covert operations.

Disdain for Law

In the Iran-Contra Affair, officials viewed the law not as setting boundaries for their actions, but raising impediments to their goals. When the goals and the law collided, the law gave way:

—The covert program of support for the Contras evaded the Constitution's most significant check on Executive power: the President can spend funds on a program only if he can convince Congress to appropriate the money.

When Congress enacted the Boland Amendment, cutting off funds for the war in Nicaragua, Administration officials raised funds for the Contras from other sources—foreign Governments, the Iran arms sales, and private individuals; and the NSC staff controlled the expenditures of these funds through power over the Enterprise. Conducting the covert program in Nicaragua with funding from the sale of U.S. Government property and contributions raised by Government officials was a flagrant violation of the Appropriations Clause of the Constitution.

—In addition, the covert program of support for the Contras was an evasion of the letter and spirit of the Boland Amendment. The President made it clear that while he opposed restrictions on military or paramilitary assistance to the Contras, he recognized that compliance with the law was not optional. "[W]hat I might personally wish or what our Government might wish still would not justify us violating the law of the land," he said in 1983.

A year later, members of the NSC staff were devising ways to continue support and direction of Contra activities during the period of the Boland Amendment. What was previously done by the CIA—and now prohibited by the Boland Amendment—would be done instead by the NSC staff.

The President set the stage by welcoming a huge donation for the Contras from a foreign Government—a contribution clearly intended to keep the Contras in the field while U.S. aid was barred. The NSC staff thereafter solicited other foreign Governments for military aid, facilitated the efforts of U.S. fundraisers to provide lethal assistance to the Contras, and ultimately developed and directed a private network that conducted, in North's words, a "full service covert operation" in support of the Contras.

This could not have been more contrary to the intent of the Boland legislation.

Numerous other laws were disregarded:

—North's full-service covert operation was a "significant anticipated intelligence activity" required to be disclosed to the Intelligence Committees of Congress under Section 501 of the National Security Act. No such disclosure was made.

—By Executive order, a covert operation requires a personal determination by the President before it can be conducted by an agency other than the CIA. It requires a written Finding before any agency can carry it out. In the case of North's full-service covert operation in support of the Contras, there was no such personal determination and no such Finding. In fact, the President disclaims any knowledge of this covert action.

—False statements to Congress are felonies if made with knowledge and intent. Several Administration officials gave statements denying NSC staff activities in support of the Contras which North later described in his testimony as "false," and "misleading, evasive, and wrong."

—The application of proceeds from U.S. arms sales for the benefit of the Contra war effort violated the Boland Amendment's ban on U.S. military aid to the Contras, and constituted a misappropriation of Government funds derived from the transfer of U.S. property.

—The U.S. Government's approval of the pre-Finding 1985 sales by Israel of arms to the Government of Iran was inconsistent with the Government's obligations under the Arms Export Control Act.

—The testimony to Congress in November 1986 that the U.S. Government had no contemporaneous knowledge of the Israeli shipments, and the shredding of documents relating to the shipments while a Congressional inquiry into those shipments was pending, obstructed Congressional investigations.

—The Administration did not make, and clearly intended never to make, disclosure to the Intelligence Committees of the Finding—later destroyed—approving the November 1985 HAWK shipment, nor did it disclose the covert action to which the Finding related.

The Committees make no determination as to whether any particular individual involved in the Iran-Contra Affair acted with criminal intent or was guilty of any crime. That is a matter for the Independent Counsel and the courts. But the Committees reject any notion that worthy ends justify violations of law by Government officials; and the Committees condemn without reservation the making of false statements to Congress and the withholding, shredding, and alteration of documents relevant to a pending inquiry.

Administration officials have, if anything, an even greater responsibility than private citizens to comply with the law. There is no place in Government for law breakers.

Congress and the President

The Constitution of the United States gives important powers to both the President and the Congress in the making of foreign policy. The President is the principal architect of foreign policy in consultation with the Congress. The policies of the United States cannot succeed unless the President and the Congress work together.

Yet, in the Iran-Contra Affair, Administration officials holding no elected office repeatedly evidenced disrespect for Congress' efforts to perform its Constitutional oversight role in foreign policy:

—Poindexter testified, referring to his efforts to keep the covert action in support of the Contras from Congress: "I simply did not want any outside interference."

—North testified: "I didn't want to tell Congress anything" about this covert action.

—Abrams acknowledged in his testimony that, unless Members of Congressional Committees asked "exactly the right question, using exactly the right words, they weren't going to get the right answers," regarding solicitation of third-countries for Contra support.

—And numerous other officials made false statements to, and misled, the Congress.

Several witnesses at the hearings stated or implied that foreign policy should be left solely to the President to do as he chooses, arguing that shared powers have no place in a dangerous world. But the theory of our Constitution is the opposite: policies formed through consultation and the democratic process are better and wiser than those formed without it. Circumvention of Congress is self-defeating, for no foreign policy can succeed without the bipartisan support of Congress.

In a system of shared powers, decision-making requires mutual respect between the branches of government.

The Committees were reminded by Secretary Shultz during the hearings that "trust is the coin of the realm." Democratic government is not possible without trust between the branches of government and between the government and the people. Sometimes that trust is misplaced and the system falters. But for officials to work outside the system because it does not produce the results they seek is a prescription for failure.

Who Was Responsible

Who was responsible for the Iran-Contra Affair? Part of our mandate was to answer that question, not in a legal sense (which is the responsibility of the Independent Counsel), but in order to reaffirm that those who serve the Government are accountable for their actions. Based on our investigation, we reach the following conclusions.

At the operational level, the central figure in the Iran-Contra Affair was Lt. Col. North, who coordinated all of the activities and was involved in all aspects of the secret operations. North, however, did not act alone.

North's conduct had the express approval of Admiral John Poindexter, first as Deputy National Security Adviser, and then as National Security Adviser. North also had at least the tacit support of Robert McFarlane, who served as National Security Adviser until December 1985.

In addition, for reasons cited earlier, we believe that the late Director of Central Intelligence, William Casey, encouraged North, gave him direction, and promoted the concept of an extra-legal covert organization. Casey, for the most part, insulated CIA career employees from knowledge of what he and the NSC staff were doing. Casey's passion for covert operations—dating back to his World War II intelligence days—was well known. His close relationship with North was attested to by several witnesses. Further, it was Casey who brought Richard Secord into the secret operation, and it was Secord who, with Albert Hakim, organized the Enterprise. These facts provide strong reasons to believe that Casey was involved both with the diversion and with the plans for an "off-the-shelf" covert capacity.

The Committees are mindful, however, of the fact that the evidence concerning Casey's role comes almost solely from North; that this evidence, albeit under oath, was used by North to exculpate himself; and that Casey could not respond. Although North told the Committees that Casey knew of the diversion from the start, he told a different story to the Attorney General in November 1986, as did Casey himself. Only one other witness, Lt. Col. Robert Earl, testified that he had been told by North during Casey's lifetime that Casey knew of the diversion.

The Attorney General recognized on November 21, 1986 the need for an inquiry. His staff was responsible for finding the diversion memorandum, which the Attorney General promptly made public. But as described earlier, his fact-finding inquiry departed from standard investigative techniques. The Attorney General saw Director Casey hours after the Attorney General learned of the diversion memorandum, yet he testified that he never asked Casey about the diversion. He waited two days to speak to Poindexter, North's superior, and then did not ask him what the President knew. He waited too long to seal North's offices. These lapses placed a cloud over the Attorney General's investigation.

There is no evidence that the Vice President was aware of the diversion. The Vice President attended several meetings on the Iran initiative, but none of the participants could recall his views.

The Vice President said he did not know of the Contra resupply operation. His National Security Adviser, Donald Gregg, was told in early August 1986 by a former colleague that North was running the Contra resupply operation, and that ex-associates of Edwin Wilson—a well known ex-CIA official convicted of selling arms to Libya and plotting the murder of his prosecutors—were involved in the operation. Gregg testified that he did not consider these facts worthy of the Vice President's attention and did not report them to him, even after the Hasenfus airplane was shot down and the Administration had denied any connection with it.

The central remaining question is the role of the President in the Iran-Contra Affair. On this critical point, the shredding of documents by Poindexter, North, and others, and the death of Casey, leave the record incomplete.

As it stands, the President has publicly stated that he did not know of the diversion. Poindexter testified that he shielded the President from knowledge of the diversion. North said that he never told the President, but assumed that the President knew. Poindexter told North on November 21, 1986 that he had not informed the President of the diversion. Secord testified that North told him he had talked with the President about the diversion, but North testified that he had fabricated this story to bolster Secord's morale.

Nevertheless, the ultimate responsibility for the events in the Iran-Contra Affair must rest with the President. If the President did not know what his National Security Advisers were doing, he should have. It is his responsibility to communicate unambiguously to his subordinates that they must keep him advised of important actions they take for the Administration. The Constitution requires the President to "take care that the laws be faithfully executed." This charge encompasses a responsibility to leave the members of his Administration in no doubt that the rule of law governs.

Members of the NSC staff appeared to believe that their actions were consistent with the President's desires. It was the President's policy—not an isolated decision by North or Poindexter—to sell arms secretly to Iran and to maintain the Contras "body and soul," the Boland Amendment notwithstanding. To the NSC staff, implementation of these policies became the overriding concern.

Several of the President's advisers pursued a covert action to support the Contras in disregard of the Boland Amendment and of several statutes and Executive orders requiring Congressional notification. Several of these same advisers lied, shredded documents, and covered up their actions. These facts have been on the public record for months. The actions of those individuals do not comport with the notion of a country guided by the rule of law. But the President has yet to condemn their conduct.

The President himself told the public that the U.S. Government had no connection to the Hasenfus airplane. He told the public that early reports of arms sales for hostages had "no foundation." He told the public that the United States had not traded arms for hostages. He told the public that the United States had not condoned the arms sales by Israel to Iran, when in fact he had approved them and signed a Finding, later destroyed by Poindexter, recording his approval. All of these statements by the President were wrong.

Thus, the question whether the President knew of the diversion is not conclusive on the issue of his responsibility. The President created or at least tolerated an environment where those who did know of the diversion believed with certainty that they were carrying out the President's policies.

This same environment enabled a secretary who shredded, smuggled, and altered documents to tell the Committees that "sometimes you have to go above the written law;" and it enabled Admiral Poindexter to testify that "frankly, we were willing to take some risks with the law." It was in such an environment that former officials of the NSC staff and their private agents could lecture the Committees that a "rightful cause" justifies any means, that lying to Congress and other officials in the executive branch itself is acceptable when the ends are just, and that Congress is to blame for passing laws that run counter to Administration policy. What may aptly be called the "cabal of the zealots" was in charge.

In a Constitutional democracy, it is not true, as one official maintained, that "when you take the King's shilling, you do the King's bidding." The idea of monarchy was rejected here 200 years ago and since then, the law—not any official or ideology—has been paramount. For not instilling this precept in his staff, for failing to take care that the law reigned supreme, the President bears the responsibility.

Fifty years ago Supreme Court Justice Louis Brandeis observed: "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law, it invites every man to become a law unto himself, it invites anarchy."

The Iran-Contra Affair resulted from a failure to heed this message.

Part II

Central America

Chapter 1

Introduction: Background on U.S.-Nicaragua Relations

On July 17, 1979, President Anastasio Somoza Debayle and his family fled Nicaragua. A civil war that had devastated the nation's economy and caused more than 130,000 casualties was at an end, as was the autocratic and corrupt 43-year rule of the Somoza family. But the battle for Nicaragua's future was just beginning.

The United States had long played a role in Nicaragua's affairs. Under the Monroe Doctrine of 1823, the United States had declared the Western hemisphere, including Central America, off-limits to European powers. For the rest of the 19th century, U.S. influence was episodic. An American privateer named William Walker briefly seized control of Nicaragua in 1855, opened its borders to slavery, and appointed himself President before he was deposed and executed. The opening of the Panama Canal, however, increased the strategic importance of Nicaragua to the United States in the early 20th century.

A treaty signed by the United States and Nicaragua in 1911 gave the United States an exclusive right of intervention in return for the reorganization of Nicaragua's finances. One year later, President Taft invoked this pact as a basis for dispatching 2,700 Marines to Nicaragua. The Marines initially arrived at the request of a U.S.-supported Nicaraguan President, ostensibly to protect American property and citizens. They stayed, with one brief intermission, until 1933. During this period, Nicaragua was a virtual dependency of the United States.

From 1927 to 1933, the Marines and the Marine-trained Nicaraguan National Guard, with General Anastasio Somoza Garcia at its head, fought a guerrilla war against the forces of General Augusto Cesar Sandino, who opposed the U.S.-backed Conservative Government of Adolfo Diaz. Sandino, whose aim was to rid Nicaragua of "U.S. imperialists," became a national hero to many Nicaraguans during those years; the Sandinistas were named after him. When U.S. forces withdrew in 1933, Sandino accepted a truce. He was shot dead a year later. Many authorities believe Sandino was killed on direct orders from Somoza, who seized power from the civilian government in 1936.

From 1936 to 1979, Anastasio Somoza Garcia and then his son, Anastasio Somoza Debayle, ruled Nicaragua. The rule of Anastasio Somoza Debayle was characterized by corruption; the Somoza family owned nearly one-third of all the land and controlled much of the country's wealth.

In 1961, opponents of Somoza formed the National Liberation Front (FSLN), popularly known as the Sandinistas. This fledgling resistance organization drew much of its early support from students. Fidel Castro provided some of its initial financial backing. Through the early 1970s, the FSLN was a marginal group, unable to succeed in its low-level guerrilla war or to marshal popular support.

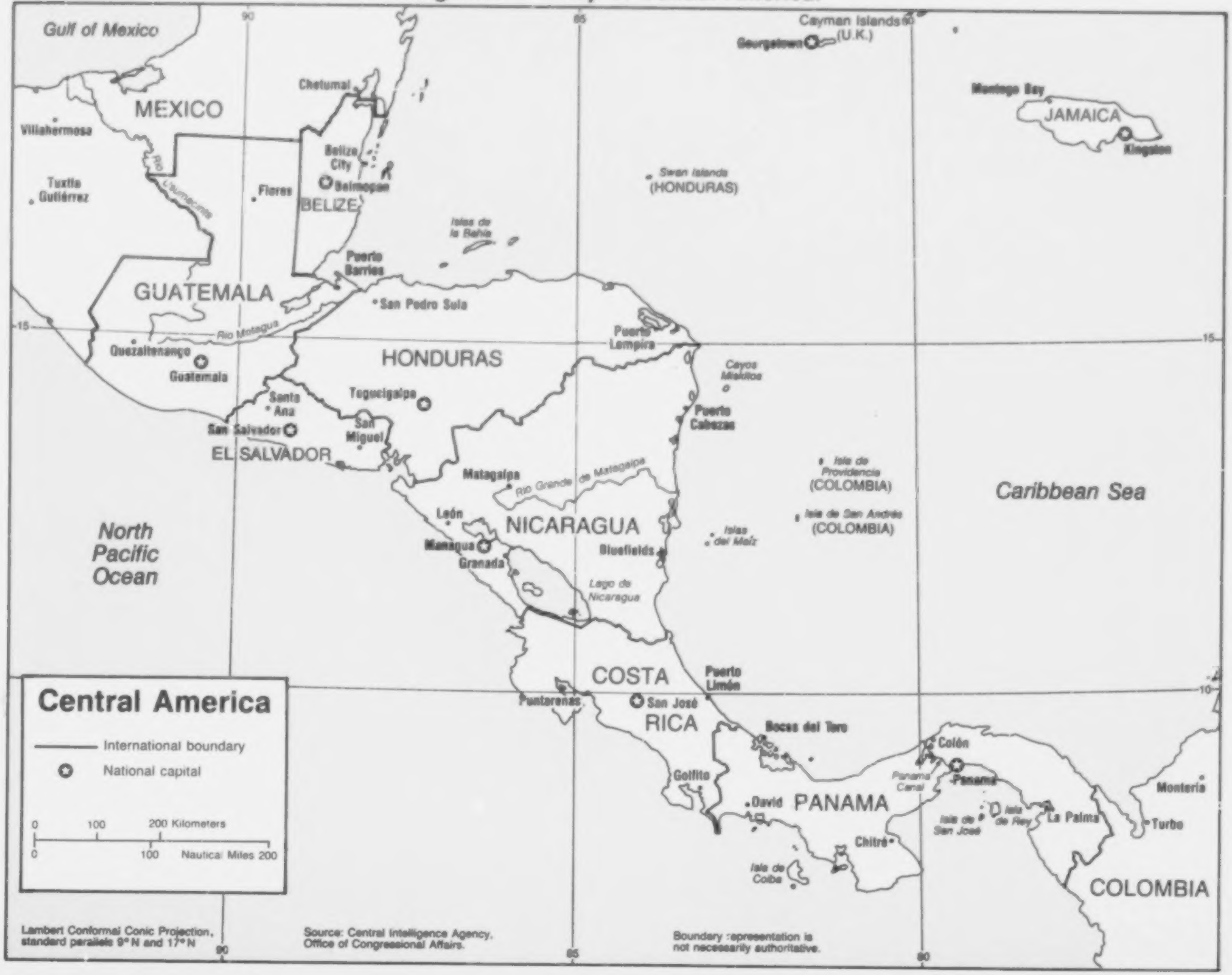
The 1972 earthquake that devastated the capital city of Managua, however, changed the nature of the conflict between the rebels and the Government. Following the earthquake, Somoza reaped immense profits from international relief efforts. His show of greed in the face of so much suffering was an important fact in his loss of support from the growing Nicaraguan business and professional classes. Another was his grooming of his son, known as Tachito, to inherit his position.

Successive attacks by the FSLN were met by increasingly harsh reprisals by the National Guard. Strikes, street protests, and guerrilla raids prompted Somoza to order the wholesale shooting of alleged peasant collaborators and the clearance of large areas of the countryside where opposition fighters found sanctuary. Somoza's human rights abuses led the Carter Administration in April 1977 to reduce military and economic aid to the regime. Six months later, the aid was restored after Nicaragua promised to curb the excesses of the National Guard.

Despite Somoza's promises, the situation deteriorated. In January 1978, Pedro Joaquin Chamorro, the editor of La Prensa, Nicaragua's foremost opposition newspaper, was assassinated. His assassins were never found, but the public reacted against the Government. A wave of protest swept the country. The ranks of the FSLN swelled with new recruits. Business, trade, and church groups joined the rebellion.

The FSLN was the only force trained and capable of opposing the National Guard. The fact that the movement had taken on the rhetorical trappings of a leftist insurgency seemed of little consequence to Nicaraguans eager to remove Somoza. Following the

Figure 1-1. Map of Central America.


Gulf of Mexico
MEXICO
Villahermosa
Tuxtla Gutiérrez
Río Usumacinta
Chetumal
Belize City
Belmopan
BELIZE
Flores
GUATEMALA
Río Motagua
Quezaltenango
Guatemala
Puerto Barrios
San Pedro Sula
HONDURAS
Tegucigalpa
Santa Ana
San Salvador
EL SALVADOR
San Miguel
Islas de la Bahía
Swan Islands (HONDURAS)
Puerto Lempira
Cayos Miskitos
Puerto Cabezas
Matagalpa
Río Grande de Matagalpa
León
Managua
Granada
NICARAGUA
Bluefields
Lago de Nicaragua
Islas del Maíz
Isla de Providencia (COLOMBIA)
Isla de San Andrés (COLOMBIA)
Cayman Islands (U.K.)
Georgetown
Montego Bay
JAMAICA
Kingston
Caribbean Sea
North Pacific Ocean
COSTA RICA
Puntarenas
San José
Puerto Limón
Bocas del Toro
Golfito
David
PANAMA
Isla de Coiba
Chitré
Panama Canal
Colón
Panamá
Isla de San José
Isla de Rey
La Palma
Montería
Turbo
COLOMBIA
Central America
International boundary
National capital
0 100 200 Kilometers
0 100 Nautical Miles 200
90
85
80
15
10

Lambert Conformal Conic Projection, standard parallels 9° N and 17° N

Source: Central Intelligence Agency, Office of Congressional Affairs.

Boundary representation is not necessarily authoritative.

killing of Chamorro, non-Marxist resistance groups began to gather around the FSLN, leading ultimately to the creation of the Broad Opposition Front seeking to draw all economic classes, ages, and professions. By the beginning of 1979, the movement could claim the full backing of Cuba, the unqualified support of the democracies of Venezuela and Costa Rica, and broad sympathy throughout Latin America.

In February 1979, the State Department announced that, because of Somoza's unwillingness to accept a negotiated settlement, the United States was recalling more than half of its officials in Nicaragua and suspending all new economic and military aid. The end of U.S. backing cut the last props of support for the Government, and the end of the Somoza dynasty came on July 17, 1979.

The Sandinistas were enormously popular when they began their rule. A Provisional Government of National Reconstruction was formed to lead the country. At its head was a five-person directorate composed of Violetta Chamorro (widow of the murdered La Prensa editor), Alfonso Robelo, Sergio Ramirez, Moises Hassan, and Daniel Ortega. Hassan and Ortega came from the militant wing of the Sandinista Party. Members of the 18-member cabinet and the 33-member council were drawn from a broad spectrum of Nicaraguan public life. Though Nicaraguans were generally satisfied that the new Government represented the Somoza opposition, the United States was not, pointing to Ortega and Hassan as left-wing radicals.

The Sandinistas Take Over

The Sandinistas set out to court public favor and international support. They promised free elections, a free press, free enterprise, an independent judiciary, and an end to political oppression.

Yet, the Sandinistas took over television and radio stations and censored the newspaper La Prensa, which opposed repression whether by the Sandinistas or by Somoza. The Sandinistas forced the two moderate members of Nicaragua's governing council, Chamorro and Robelo, to resign, pressured opposition parties, continued political detentions, and expropriated land. The revolutionary party organization assumed the functions of state. On September 19, 1980, the Government announced that it would not hold national elections until 1985.

Americans were divided on how to interpret Sandinista intentions. If the Carter Administration did not openly embrace the Sandinistas, neither did it close all doors to a possible reconciliation. Immediately following the Sandinista victory, the United States donated $39 million in emergency food aid to Nicaragua, and in 1980 Congress appropriated an additional $75 million in emergency economic assistance (Public Law 96-257). Similarly, Washington supported the provision of aid to Nicaragua from international lending organizations.

The Carter Administration accepted the fact that the United States was in "competition" with Cuba to win over the Nicaraguan Government, but it hoped that friendly relations could be maintained. Yet while providing overt financial assistance, President Carter in the fall of 1979 signed a Finding authorizing support to the democratic elements in Nicaragua because of the concern about the effect of the Sandinista takeover on such institutions.

In public statements, Sandinista officials expressed their desire for better relations with the United States, and insisted that they had no intention of supporting insurgencies aimed at subverting their neighbors. Their actions, however, began to raise doubts. Weapons and equipment sent by Cuba through Nicaragua were making their way to rebels in El Salvador.

The new regime received aid from several sources, including United States, Mexico, Venezuela, and Western Europe. But the United States, the largest single contributor, became increasingly concerned about the new regime's growing ties with the Eastern bloc. Nicaragua increased its number of Cuban advisers, and in 1980 and 1981 signed agreements with the Soviet Union and East bloc governments, including Bulgaria and East Germany, for advisers and military and intelligence assistance.

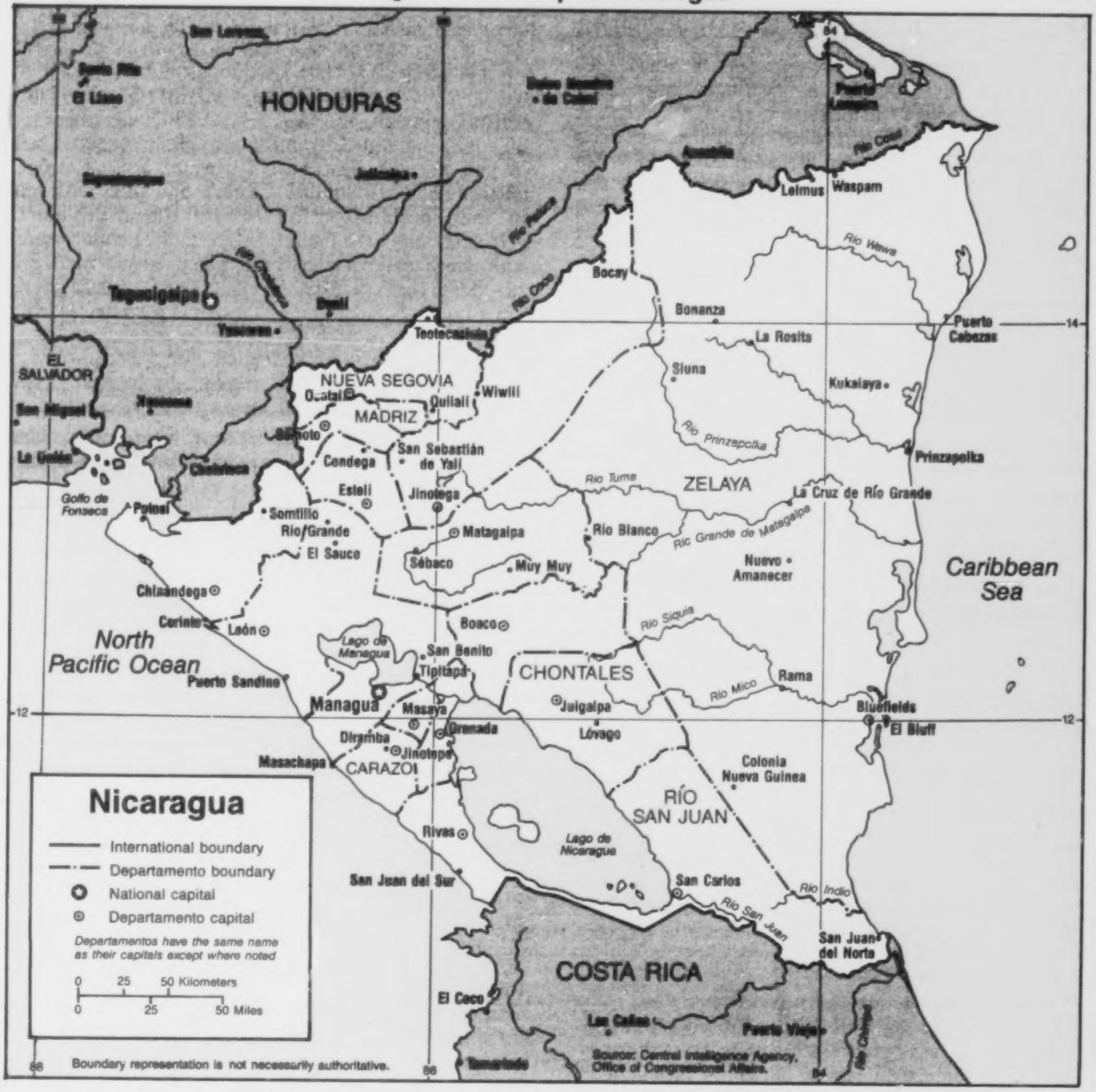
Candidate Ronald Reagan stated his firm opposition to any further U.S. support for the Sandinistas. In January 1981, President Carter suspended aid to the Nicaraguan regime. In April 1981, the Reagan Administration continued this policy. It announced that it would withhold the remaining $15 million in unspent U.S. assistance to Nicaragua and not request further economic aid until the revolution was democratized and all assistance to the Salvadoran rebels ceased.

Concerns about Nicaragua's internal repression, its growing military force, its ties to the Soviet bloc and its support for the Salvadoran insurgency led the Administration to consider ways to assist the regime's opponents, who came to be known as the Contras.

The Contras

As the Sandinistas consolidated their hold on Nicaragua in 1979 to 1981, the concerns of the United States were matched within Nicaragua itself. In response, a new Nicaraguan rebel movement—anti-Sandinista "Contras"—emerged.

Figure 1-2. Map of Nicaragua


HONDURAS
Tegucigalpa
EL SALVADOR
San Miguel
La Unión
Golfo de Fonseca
Potosí
Río Coco
Río Patuca
Bocay
Leimus
Waspam
Río Wawa
Bonanza
La Rosita
Siuna
Puerto Cabezas
Kukalaya
Río Prinzapolka
Prinzapolka
Teotecacinte
NUEVA SEGOVIA
Ocotal
Quilalí
Wiwilí
MADRIZ
Somoto
San Sebastián de Yalí
Condega
Estelí
Jinotega
Río Tuma
ZELAYA
La Cruz de Río Grande
Somotillo
Río Grande
El Sauce
Matagalpa
Río Blanco
Río Grande de Matagalpa
Sébaco
Muy Muy
Nuevo Amanecer
Caribbean Sea
Chinandega
Corinto
León
North Pacific Ocean
Puerto Sandino
Boaco
Lago de Managua
San Benito
Tipitapa
Río Siquia
CHONTALES
Rama
Managua
Masaya
Granada
Juigalpa
Río Mico
Bluefields
El Bluff
Lóvago
Diriamba
Jinotepe
CARAZO
Masachapa
Colonia Nueva Guinea
RÍO SAN JUAN
Rivas
Lago de Nicaragua
San Juan del Sur
San Carlos
Río Indio
Río San Juan
San Juan del Norte
COSTA RICA
El Coco
14
12
84
86
88
Nicaragua
International boundary
Departamento boundary
National capital
Departamento capital
Departamentos have the same name as their capitals except where noted
0 25 50 Kilometers
0 25 50 Miles

Boundary representation is not necessarily authoritative.

Source: Central Intelligence Agency, Office of Congressional Affairs.

The Contras were not a monolithic group, but a combination of three distinct elements of Nicaraguan society: former National Guardsmen and right-wing figures who had fought for Somoza and against the revolution; anti-Somocistas who had supported the revolution but felt betrayed by the Sandinista Government; and Nicaraguans who had avoided direct involvement in the revolution but opposed the Sandinistas' increasingly anti-democratic regime.

Many future Contra leaders fled to exile. Some, like Jose Francisco Cardenal, head of the Superior Council of Private Enterprise (COSEP), moved to the United States, where they began a political campaign to win support for their cause in Congress and from among the Cuban and Nicaraguan exile communities. Other anti-Sandinistas set about organizing a resistance movement in neighboring nations.

The largest and most active of these groups, which later came to be known as the Nicaraguan Democratic Force (FDN), was led by Adolfo Calero Portocarrero. Calero had been an accountant and businessman, and had been active in the movement to oust Somoza. Following the liberation, he served as the political coordinator of the Conservative Democratic Party and became an outspoken critic of the Sandinista Government. Calero joined the resistance movement after his office and home were attacked and he was forced into exile.

Although Calero had opposed Somoza, the FDN had its roots in two insurgent groups made up of former National Guardsmen who fled Nicaragua after the fall of Somoza. In 1981, this branch of the resistance consisted of only a few hundred men.

Other elements of the anti-Sandinista resistance emerged following the failure of members of the Nicaraguan provisional government to resolve their differences over the political direction of the country. Increasingly, those who opposed the Sandinistas found themselves isolated within the Government. The resignation in 1980 of Violetta Chamorro from the ruling directorate triggered an exodus of moderate leaders from the Government.

Among those who left were Alfonso Robelo Callejas and Arturo J. Cruz. Robelo had entered politics during the two national strikes organized against Somoza. In March 1978, he founded the Nicaraguan Democratic Movement and was imprisoned by Somoza. After his release, he was forced into exile. He participated in the post-revolutionary Government as the head of his own political party and as an opponent of the Sandinista regime. Cruz, who would become a prominent Contra leader, was named Nicaraguan Ambassador to the United States in 1981. He resigned 2 years later in protest against Sandinista policies, and joined the resistance in 1983.

In addition to the main force of FDN fighters centered primarily in the northern portion of the country, other resistance forces became active in other parts of Nicaragua. These include several Indian groups operating along the Atlantic coast and, after 1981, a group formed by the charismatic figure and former Sandinista guerrilla leader and hero, Eden Pastora. Forces under Pastora were based along the southern border with Costa Rica.

Initial support for the Nicaraguan resistance came from another country, which organized and supplied paramilitary forces in early 1981. By the end of 1981, however, the Contras were looking to the United States for their support. They were to find a receptive audience—President Reagan.

Chapter 2

The NSC Staff Takes Contra Policy Underground

In December 1981, the President authorized a Central Intelligence Agency (CIA) covert action program to support the Contras. The CIA's activity, however, did not remain covert for long: within months, it was the topic of news reports and the subject of Congressional debate questioning the Administration's policy in support of the Contras. The Administration responded that it did not intend to overthrow the Sandinista Government in Nicaragua, but sought to check the spread of communism to El Salvador and other nations in Central America.

In 1982, in the first Boland Amendment, Congress sought to enforce that claim by barring the Administration from using Congressionally appropriated money for the "purpose" of overthrowing the Sandinista regime. The Administration, although not pleased with the amendment, nevertheless accepted it, because the amendment allowed the Administration to maintain support for the Contras so long as that support had as its "purpose" stopping the spread of the Sandinista revolution outside Nicaragua's borders.

With the first Boland Amendment, then, came a temporary compromise between the Administration and Congress. But it was an inherently uneasy compromise, based more on semantics than substance: The Contras were not in the field to stop Sandinista arms flowing to El Salvador; they were in the field to overthrow the Sandinistas. The Intelligence Committees of Congress, while rejecting that objective, nevertheless approved CIA use of contingency reserve funding to support the anti-Sandinistas. And the Administration embraced the contradiction inherent in the new law, by emphasizing that U.S. support was aimed only at interdicting arms destined for other Central American Communist insurgencies.

During 1983, press reports of a "secret" CIA war in Nicaragua led to increased questioning in Congress. In July, the House voted to end all Contra aid. Meanwhile, in the hopes of forestalling an aid cutoff, the Administration accepted an invitation by the Senate Select Committee on Intelligence to clarify its intentions in pursuing a covert program. Despite Administration efforts to meet those concerns, by the winter, the House and Senate had agreed to cap Contra funding at $24 million, a sum that both the Administration and the Congress knew would not last through fiscal 1984.

Nonetheless, the Administration decided to escalate the operations in Nicaragua. When the Nicaraguan harbor mining was disclosed in April, it created a storm of protest in Congress and around the country and, chiefly as a result, Congress declined to appropriate more money for the Contras. With the CIA out of funds for the Contras, the NSC staff took over the program of supporting the Contras. But this time, the operation was covert in a new sense—it was concealed from Congress.

Beginning in May 1984, when the CIA-appropriated funds for the Contras ran out, the National Security Council (NSC) staff raised money for Contra military operations from third countries with the knowledge of the President, supervised the Contras' purchase of weapons, and provided guidance for the Contras' military operations. The operational responsibilities fell largely to Lt. Col. Oliver L. North, a member of the NSC staff who reported to the National Security Adviser, Robert C. McFarlane, and his deputy, Vice Admiral John M. Poindexter.

In October 1984, the Congress passed and the President signed the second Boland Amendment prohibiting the expenditure of any available funds in support of Contra military operations by any agency or entity involved in intelligence activities. Rather than halting U.S. support for the Contras, the CIA's withdrawal was treated as a call for the NSC staff to take over the entire covert operation, raising more money from a third country, arranging for arms purchases, and providing military intelligence and advice. The NSC staff went operational—and underground.

The December 1981 Finding

Within 2 months of President Reagan's inauguration, the CIA proposed, and the NSC considered, plans for covert action to deal with the growing Cuban presence in Nicaragua.[1] The United States continued to recognize the Nicaraguan Government, but diplomatic relations became increasingly adversarial because of the Administration's concern that the Sandinistas were continuing to receive significant military support from Cuba, support targeted, in part, for insurgent groups beyond Nicaraguan borders.[2]

In December 1981, President Reagan signed his first Finding specifically authorizing covert paramilitary actions against the Sandinista Government in Nicaragua.[3] Under the law, covert actions may be initiated only by a personal decision of the President. A Finding is an official document embodying that decision. By signing a Finding, a President not only authorizes action, but accepts responsibility for its consequences.

Sponsoring the CIA's new covert program in Central America was the Director of Central Intelligence, William J. Casey. Casey was a veteran of covert operations, having served with the Office of Strategic Services (OSS), the predecessor to the CIA, during the Second World War. In 1945, Casey, just 32 years old and a Navy lieutenant, was chief of the Secret Intelligence Branch that directed intelligence gathering in German-controlled Europe from OSS headquarters in London.

After the war, Casey became a successful corporate lawyer and a wealthy investor, was appointed Chairman of the Securities and Exchange Commission, and later became head of the President's 1980 election campaign. Following the 1980 election, Casey was named Director of Central Intelligence, the first Director to enjoy Cabinet rank. Casey was a firm believer in the value of covert operations, and took an activist, aggressive approach to his craft. In the words of the CIA's Deputy Director of Operations, Clair George, "Bill Casey was the last great buccaneer from OSS."[4]

Pastora Defects

Casey saw the opportunity to make military headway against the Sandinistas in early 1982, when rebel leader Eden Pastora defected from the ruling Sandinista junta. Pastora appeared to be an ideal candidate for Contra military leadership. Known to his followers by the *nom de guerre*, "Comandante Zero," he had been one of the heroes of the fight against Somoza. From 1977 to 1978, he served in the Sandinista National Liberation Front and later held several high posts in the new Government until his abrupt resignation in 1981. In April 1982, Pastora organized the Sandinista Revolutionary Front (FRS) and declared war on the Sandinista Government.

Although Pastora was a popular, charismatic leader with the potential to challenge the Sandinistas, his geographic base presented a problem for the Administration. He insisted on operating in the southern part of Nicaragua. The Administration, however, claimed that its only purpose in aiding the Contras was to interdict arms flows to El Salvador, which lies to the north of Nicaragua. Support for Pastora in the South contradicted that claim.

Casey's deputy, Admiral Bobby R. Inman, an intelligence professional who had headed the National Security Agency, objected to this broadening of the covert program. He believed that it was unsound, and unauthorized by the existing Presidential Finding. Yet Casey was determined to proceed. Inman retired at the end of June 1982 and the CIA supported Pastora without any change in the Presidential Finding.[5]

A Proposal for a New Finding

Pastora's rebel group "develop[ed] quickly."[6] By July 12, 1982, Donald Gregg, then head of the NSC's Intelligence Directorate and responsible for all covert action projects, proposed a new draft Finding to keep pace with Pastora's developing operations. Gregg, like Inman, believed that broad support for Pastora was outside the scope of the December 1981 Finding.[7] He wrote to William Clark, the National Security Adviser, that "additional actions not covered by previous authority are now being proposed."[8] Those "additional actions" included providing "financial and material support," training, and arms supply to Pastora's forces.[9] The problem with providing that assistance under the December 1981 Finding, as Gregg saw it, was that the "rationale" of the earlier Finding appeared "to be to have the anti-Sandinista forces strike against the Cuban presence in Nicaragua rather than attacking the Sandinista units."[10]

Vice Admiral Poindexter, then military adviser to the National Security Adviser, disagreed. In a handwritten note, Poindexter stated: "I don't see this really needs to be approved since the earlier Finding covers it, but maybe it would be good to get a confirmation since we now have a better idea as to where we are going."[11] As drafted by Gregg, the proposed Finding provided for CIA paramilitary support to forces inside Nicaragua for the purpose of "effect[ing] changes in Nicaraguan government policies."[12] This draft Finding, with its broadly stated goals, was never approved by the President.

Boland I

By the fall of 1982, press reports told of a growing U.S. involvement in Nicaragua.[13] Administration spokesmen responded by stating that the U.S. Government was seeking not to overthrow the Nicaraguan Government, but merely to prevent it from exporting revolution to El Salvador. Aid to the Contras was presented as an act in defense of El Salvador, not a hostile act against Nicaragua.

Congress soon began to question this explanation.[14] The Contras were in the field for the announced purpose of overthrowing the Sandinistas, not simply to interdict supplies destined for El Salvador.[15] Congress debated the issue extensively, with some Members questioning whether their own Government was violating the charters of both the United Nations and the Organization of American States by interfering in the internal affairs of Nicaragua.[16] Members voiced concern that U.S. support for the Contras was providing a "convenient pretext" for the Sandinistas to impose martial law, suppress freedom of the press, stifle religion, and undermine the rights of assembly and free elections.[17] Those who supported these views called for a complete cutoff of aid to the Contras.

There was equally strong support in Congress, particularly in the Senate, for aiding the Contras. Some Members believed that the Sandinistas were trying to spread a Marxist revolution to neighboring states. They argued that no Communist regime had ever stepped down or consented to free elections and that support for the Contras was necessary to bring about democracy in Nicaragua.[18]

Out of this debate emerged an amendment to the Defense Appropriations bill for fiscal year 1983, later known as Boland I. Introduced by Representative Edward P. Boland, the amendment passed the House by a vote of 411-0, and was adopted, in December 1982, by a Conference Committee of the House and Senate. This first Boland Amendment prohibited CIA use of funds "for the purpose of overthrowing the Government of Nicaragua."[19]

The internal contradictions of the Administration's announced Nicaragua policy[20] were carried forward in the new law: Congress appropriated funds that would be used by the CIA for Contra assistance, but at the same time rejected the Contras' objective to remove the Sandinista Government. During the floor debate on his amendment, Representative Boland indicated that while the Administration did not like his proposed restrictions, it would accept them.[21] Congress had not cut Contra funding; it merely had legislated an impermissible purpose. The Administration still could maintain support for the Contras and did, by relying upon its original justification for Contra support—stopping arms flows to El Salvadoran Communist insurgents.

In December 1982, The New York Times reported intelligence officials as saying that Washington's "covert activities have . . . become the most ambitious paramilitary and political action operation mounted by the C.I.A. in nearly a decade. . . ."[22] One month later, in January 1983, Senator Patrick J. Leahy, accompanied by staff of the Senate Intelligence Committee, visited Central America to review U.S. intelligence activities related to Nicaragua. His findings, supplemented by followup Committee briefings and inquiries, revealed that the covert action program was "preceding policy," that it was "growing beyond that which the Committee had initially understood to be its parameters," and that "there was uncertainty in the executive branch about U.S. objectives in Nicaragua."[23]

Questions about compliance with the Boland Amendment increased throughout 1983. In March, 37 House Members sent a letter to the President warning that CIA activities in Central America could be violating the law.[24] In April, news reporters visiting Contra base camps wrote that "[t]he U.S.-backed secret war against Nicaragua's leftist Sandinista regime has spilled out of the shadows."[25]

Challenged to defend the Administration's compliance with the law, the President asserted in April that there had been no violation of the Boland Amendment. There would be none, said the President, because even a law he disagreed with had to be observed: "We are complying with the law, the Boland Amendment, which is the law."[26] "[W]hat I might personally wish or what our government might wish still would not justify us violating the law of the land."[27] When asked if his Administration was doing anything to overthrow the Government of Nicaragua, he replied, "No, because that would be violating the law."[28]

According to some in Congress, the Administration was facing a "crisis of confidence" about the legitimacy of CIA support for the Contras.[29] The President responded with a major address on Central America to a joint session of Congress on April 27, 1983. Rejecting images of a new Vietnam, the President stated:

> But let us be clear as to the American attitude toward the Government of Nicaragua. We do not seek its overthrow. Our interest is to ensure that it does not infect its neighbors through the export of subversion and violence. Our purpose, in conformity with American and international law, is to prevent the flow of arms to El Salvador, Honduras, Guatemala, and Costa Rica . . . .[30]

It soon became clear, however, that the President had not made the case for the Administration's Contra support policy with either the Congress or the American people.[31] He was not helped by the Contras' performance on the ground. The Contras had failed to win either popular support or military victories in Nicaragua and could not, without both, sustain public support in the United States.[32]

The Administration Responds to Congressional Unrest: May–September 1983

In May 1983, both the House and Senate Select Committees on Intelligence challenged the Administration's Nicaragua policy, but in different ways. The Senate Intelligence Committee "took the rather unusual step of requiring" that "the Administration articulate, in a clear and coherent fashion its policy objectives." Before the Committee would vote for more aid, it wanted a new Presidential Finding.[33]

The House Permanent Select Committee on Intelligence, on the other hand, favorably reported a new bill, the "Boland-Zablocki" bill, to the full House for consideration.[34] The bill barred aid for the Nicaragua covert action program, but it also took the Administration at its word about the need to stop arms flows to El Salvador. The legislation provided $80 million in assistance to Central American governments to stop the flow of arms to rebel groups, but no funds for "support of military or paramilitary activities in Nicaragua."[35] Despite strong Administration opposition, the House passed the bill on July 28, 1983, by a vote of 228-195.[36]

With its implicit threat of an aid cutoff, the Boland-Zablocki measure challenged the Administration to articulate a plausible rationale for covert aid. The bill exposed the loose fit between the Administration's announced policy of stopping arms flows to El Salvador and its covert support of the Contras. If the Administration really wanted to stop arms flows to El Salvador, it could do so directly, said the Congress; but if its purpose was to aid the Contras in overthrowing the Nicaraguan Government, there would be no funding.[37]

The Administration responded to the threat of an aid cutoff in three different ways. First, the Administration established a public relations office in the State Department attempting to muster the public and Congressional support necessary for the Contras. Second, anticipating that a cutoff might nevertheless occur, the Administration developed a secret plan to stockpile weapons for the Contras at the CIA. Finally, at the same time, to satisfy Congressional demands, the Administration agreed to draft a new Finding.

White Propaganda

In June of 1983, the Administration decided upon a new method of trying to win public support for the President's policy in Central America. On July 1, 1983, then National Security Adviser Clark announced that "the President had decided that the Administration must increase our efforts in the public diplomacy field to deepen the understanding of the support for our policies in Central America."[38]

As a result, an office of Public Diplomacy for Latin American and the Caribbean (S/LPD) was established in the State Department, headed by Otto Reich,[39] who eventually was given the rank of Ambassador.[40] The S/LPD was an interagency office with personnel contributed by the Department of State, the Department of Defense (DOD), the Agency for International Development, and the U.S. Information Agency. Although created as part of the State Department, the office was established at the direction of the National Security Council.[41] The S/LPD's activities were coordinated by an interagency working group staffed by the NSC. The principal NSC staff officer was a former senior CIA official. With the knowledge and approval of Director Casey, he was detailed to the NSC staff for a year. He later became Special Assistant to the President with responsibility for public diplomacy matters.

The mission of the office—public diplomacy—was a "new, non-traditional activity for the United States government," according to the State Department. In fact, "public diplomacy" turned out to mean public relations-lobbying, all at taxpayers' expense. The office arranged speaking engagements, published pamphlets, and sent materials to editorial writers.[42] In its campaign to persuade the public and Congress to support appropriations for the Contras, the office used Government employees and outside contractors—including Richard Miller and Francis Gomez who would later work with North to provide Contra assistance.[43]

A Deputy Director of S/LPD, Jonathan Miller, reported the office's success in what he labeled a "White Propaganda Operation," which sought to place op-ed pieces in major papers by secret consultants to the office.[44] By Reich's own description, the office adopted "a very aggressive posture vis-a-vis a sometimes hostile press." It "briefed Members of Congress, reached out to audiences previously overlooked, found new ways of reaching traditional audiences, and generally did not give the critics of the policy any quarter in the debate."[45] It claimed that "[a]ttacking the President was no longer cost free."[46]

Later, the Comptroller General would find that some of the office's efforts, in particular Jonathan Miller's "White Propaganda," were "prohibited, covert propaganda activities,"[47] "beyond the range of acceptable agency public information activities. . . ."[48] In a September 30, 1987, letter, the Comptroller General concluded that S/LPD had violated "a restriction on the State Department's annual appropriations prohibiting the use of federal funds for publicity or propaganda purposes not authorized by Congress."[49]

The CIA Tries to Stockpile

In the summer of 1983, while efforts were underway at the State Department to change public opinion, the CIA began secret preparations in the event Congress decided to cut off aid to the Contras. In that event, the Agency planned to obtain equipment free of charge from the DOD.

On July 12, the President directed that the DOD provide enhanced support for the CIA in its efforts to assist the Contras.[50] One day later, the CIA sent a "wish list" to the DOD, requesting that $28 million in equipment be transferred to it, "free-of-charge."[51] The list covered everything from medical supplies to aircraft, and included a request for personnel.[52] The

Joint Chiefs of Staff proposed that each of the four services carry a quarter of the cost of these transfers.[53] The equipment then could be stockpiled by the CIA and provided to the Contras if the need arose. The CIA would not run afoul of any aid ceiling since it had not paid for the equipment. The equipment involved had been paid for out of the normal DOD budget allocation. In short, money appropriated by Congress for one purpose would be used for another, bypassing any limits Congress might place on CIA appropriations, such as the then-pending Boland-Zablocki bill.[54]

By late summer, the DOD's General Counsel concluded that a nonreimbursable transfer would violate the Economy Act, a law requiring that the DOD be reimbursed for the cost of interagency transfers.[55] The CIA would have to pay for all items except surplus equipment. From the CIA's perspective, this defeated the purpose of the plan: to avoid the expenditure of CIA funds and shift the cost to the DOD.[56] The project was finally terminated on February 12, 1985, after the CIA had obtained, without cost, 3 surplus Cessna aircraft and, at cost, 10 night vision goggles, 1 night vision sight, and a Bushmaster cannon.[57]

The September 1983 Finding: A New Rationale for Covert Aid

Trying to forestall a complete cutoff of Congressional aid, the Administration accepted the Senate Intelligence Committee's proposal that it draft a new Finding defining and delimiting the purposes of the covert program. By August, Director Casey had presented the Committee with a first draft and later, in September, proceeded to "informally discuss the finding with Senator Goldwater and other key Senators of the SSCI."[58] Within the Administration, the Finding was, as North put it, "thoroughly scrubbed" by the State Department and NSC staff as well by as the Justice Department and lawyers from DOD and CIA.[59]

On September 16, 1983, at a National Security Planning Group (NSPG) meeting, Director Casey briefed the President and his advisers from the State and Defense Departments on the draft Finding. The Director explained that the earlier Finding had been "modified to reflect [a] change of objectives. . . ."[60] No longer was the covert program justified solely by the need to curb Cuban support for the Sandinistas or to stop arms flows out of Nicaragua. A new, and broader, rationale was added: covert aid was intended to pressure the Sandinistas to negotiate a treaty with nearby countries.[61]

The new Finding also reflected a change of tactics. Congress would not accept a Finding broad enough to permit paramilitary operations conducted by U. S. citizens. The Administration gave its assurances that aid for paramilitary operations would be limited to third-country nationals.[62] Casey told the President that the "new Finding no longer lets us engage in PM [paramilitary operations]."[63]

Three days later, on September 19, 1983, the Finding was signed.[64] The next day, the Intelligence Committees received briefings on it. Shortly thereafter, the Senate Intelligence Committee voted to provide aid for a continued covert operation in Nicaragua.[65]

The new Finding, however, was not without problems. The Administration's stated objective in supporting the Contras was now to pressure the Sandinistas into accepting a treaty that had to include free elections. If, as the President believed, the Sandinistas could not win such an election, they would never agree to such a treaty.[66] Only the prospect of a military defeat would push them toward a negotiating posture. Yet, the renunciation of a military victory was the price set by Congress for a bipartisan compromise. The Finding thus contained within it a paradox that would haunt the Administration's Nicaragua policy.

Forcing the Issue: The December Funding Cap and Intensifying Covert Operations

One day after the September Finding was briefed to the Intelligence Committees, an unnamed Administration official was quoted in The New York Times explaining the rationale of the new Finding: "Yes, we are supporting the rebels until the Nicaraguans stop their subversion," an "approach," the official urged, that "should end the argument over whether the Administration was violating its pledge by doing more than just stopping the arms flow."[67]

But Administration hopes that the September Finding, and its new rationale for covert action, would end the debate on Contra aid were quickly dashed. Discussions were held on the House floor over the advisability of continuing covert aid, and the President took his cause to the public in his radio addresses. In October, the House voted to halt all aid to paramilitary groups fighting the Nicaraguan Government.[68] The Senate, however, wanted to continue aid. In early December, the House and Senate agreed to a compromise: A "cap" of $24 million would be placed on Contra funding, and the CIA would be barred from using its contingency reserves to make up any shortfall.[69]

Congress and the Administration recognized that the $24 million appropriation would be insufficient to sustain a covert operation through the fiscal year.[70] Therefore, the door was left open for a future Administration funding request to carry the program for the balance of the year if negotiations for a peace treaty were thwarted by the Sandinistas. The President was required to report to Congress by March 15 on the steps taken to achieve a negotiated settlement in Central America.[71]

The Decision to Bring the Situation to a Head

Having survived the threat of a total cutoff of funds for the Contras, the Administration decided to intensify the CIA's covert activities while funding still remained.[72] Charged by the new National Security Adviser, Robert McFarlane, to prepare an "in-depth review" of the Administration's Central America policy,[73] a Special Interagency Working Group (SIG)[74] concluded: "Given the distinct possibility that we may be unable to obtain additional funding in FY-84 or FY-85, our objective should be to bring the Nicaragua situation to a head in 1984."[74a] At a January 6 NSPG meeting, the President and his advisers concurred in the SIG recommendation: "Our covert action program should proceed with stepped up intensity."[75]

Even before the decision had been officially acknowledged, plans had been implemented to step-up paramilitary operations in Central America. In the fall, speedboats carried out attacks against Sandinista patrol craft and fuel tanks.[76] By November, a more heavily armed speedboat had been developed for follow-on operations.[77]

At the end of December, and thereafter, the mining and other operations increased. In early January, the CIA proposed attacks against fuel supply depots and transmission lines along the "entire Pacific coast of Nicaragua."[78] On January 7, three magnetic mines were placed in Sandino harbor;[79] on February 3, an air attack destroyed a Sandinista "communications and naval arms depot"[80]; and on February 29, more mines were placed at Corinto.[81] By March 29, plans had been made to support an attack by Eden Pastora on San Juan del Norte; it was hoped that the attack would result in the installation of a provisional government.[82]

The Role of Lt. Col. Oliver North

At the NSC, Lt. Col. Oliver North became the liaison with the CIA in its intensified covert effort. A graduate of the U. S. Naval Academy, he had distinguished himself on the battlefield in Vietnam, winning a Silver Star, a Bronze Star, and two Purple Hearts.[83] He was assigned to the NSC in October 1981, where he quickly established a reputation with his superiors as a staffer who could get a job done.[84]

North was energetic, articulate, action-oriented, and had a reputation for bypassing red tape.[85] His superiors could depend on him not only to carry out orders, but to keep them informed.[86] North was a prodigious writer, often staying in his office until late at night to complete lengthy papers or other work.[87]

As described by a number of his colleagues, North's relationship to McFarlane was very close.[88] With McFarlane's rise to the position of National Security Adviser, North came to play an increasingly large role not only in the operational aspects of Contra policy, but also in forging that policy. North already had contacts in Central America who were pleased with his success. On November 7, 1983, John Hull, Indiana native, ranch owner in Costa Rica, and Contra supporter, wrote that "B.G.," or "blood and guts," as North was known, was to have a new boss, Robert McFarlane. Hull hoped this would make North "more powerful as we need more like him."[89]

North became a strong advocate within the NSC staff of intensified covert support for the Contras. He was the point of contact, transferring information from the CIA to the National Security Adviser for the President's approval.[90] For every significant, and sometimes insignificant, operation, he provided a memorandum to the National Security Adviser destined for the President. His reports were detailed and enthusiastic, his recommendations supportive of further operations.[91]

In his new assignment, North looked to Casey for guidance. In his words, Director Casey was a "teacher or philosophical mentor" of sorts, to whom he looked for help and advice on a regular basis.[92] "Bill Casey was for me a man of immense proportions," North testified, "a man whose advice I valued greatly and a man whose concern for this country and the future of this land were, I thought, on the right track." "History," North stated "will bear that out."[93]

Tension Between the 1983 Finding and Intensified Operations

In a series of memorandums written between October 1983 and March 1984, North recorded the CIA's increasing covert presence in the region. Relatively minor operational details were given to the President, as on November 4, when North advised McFarlane to suggest an increase in the number of weapons supplied to the Contras by 3,000. The President approved the recommendation.[94] North not only sought approval for, but also reported the results of, various actions proposed to him by Agency personnel. On February 3, he reported a successful attack on a Sandinista communications and naval arms depot. Admiral Poindexter penned, "Well done," and checked North's recommendation that the President would be briefed.[95]

North frequently stated in his memorandums that the actions recommended were within the September 1983 Finding.[96] Yet, progress toward negotiations and success in arms interdiction were not the focus of his attention; instead, the destruction of Sandinista fuel supply lines or the mining of harbors was the subjects of these memorandums. North kept his superiors advised of Contra actions that would weaken the Sandinista regime, explaining that the purpose of the mining and attacks was to enhance the Contras' military strength, while "reduc[ing] the mobility of Sandinista military units."[97]

North could contend that such military activities were within the scope of the Finding because of the Finding's essential ambiguity: Paramilitary action once authorized, may be used to promote a diplomatic end while at the same time furthering the cause of military victory. But by March of 1984, it had become clear that the diplomatic end the Finding described was not what North anticipated or encouraged. In memoranda to McFarlane, he proposed significant military actions against the Sandinistas, the details of which cannot be disclosed for national security reasons, but which give substance to the testimony of Clair George, CIA Deputy Director for Operations, that North's ideas were often extreme, "crazy," or "hairbrained."[98] The memos reveal the same enthusiasm for covert paramilitary operations that North would later bring to his work as the "switching point" for Contra support during the next 2 years.[99]

The Money Begins to Run Out

By February 1984, the $24 million earmarked by Congress for the Contras was being quickly depleted. On February 13, North wrote to McFarlane, emphasizing the importance of obtaining "relief from the $24M ceiling,"[100] but recognizing that "[c]ongressional resistance on this issue is formidable":

> [P]rospects for success are bleak even with a concerted effort. At some point, we may have to reassess our prospects and decide whether prudence requires that we somehow stretch our FY-84 effort to avoid running out of funds.[101]

In a memorandum drafted by North for the President, McFarlane concluded that "[u]nless an additional $14M [million] is made available, the [Contra aid] program will have to be drastically curtailed by May or June of this year."[102]

The Harbor Mining Disclosures

In early April, the country learned that the U.S. Government was involved in the mining of Nicaraguan harbors. U.S. Government presence in Nicaragua had become "embarrassingly overt."[103] As McFarlane testified: "The disclosure that harbors had been mined in Nicaragua was received very badly. . . ."[104]

Some in Congress believed that the Administration had misrepresented the activities it conducted under the September 1983 Finding.[105] Senator Barry Goldwater, Senate Intelligence Committee Chairman, charged that his Committee Members had been deceived at the very moment they were being asked to vote to support Contra aid. "[I]t is indefensible on the part of the Administration to ask us to back its foreign policy when we don't even know what is going on," he declared.[106]

After initial assertions by Director Casey and the National Security Adviser[107] that full and detailed disclosure had been provided to Congress, the Administration decided to end the escalating battle and offered a truce. On April 26, Director Casey "apologize[d] profoundly," conceding inadequate disclosure.[108] But the "apology" could not heal the "fracture" between Congress and the Administration that the mining had created.[109] The Administration's policy to bring the situation "to a head" had backfired: the plan, rather than attracting support, lost it.

Keeping the Contras Together: Spring–Summer 1984

The Administration's proposal for $21 million in supplemental assistance for the Contras now lay in doubt as Congress debated the course of U. S. policy in Central America. The uproar over the mining incident made any further appropriation unlikely. Indeed, House Speaker Thomas P. (Tip) O'Neill, Jr. declared that, in his view, the President's funding request was "dead."[110]

With or without appropriated funds, the Administration planned to continue supporting the Contras. In McFarlane's words, the President directed the NSC staff to keep the Contras together "body and soul."[110a] In Poindexter's words, the President "wanted to be sure that the contras were supported."[111]

McFarlane assigned this responsibility to North, who testified:

> I was given the job of holding them together in body and in soul.[112]
>
> * * * * *
>
> To keep them together as a viable political opposition, to keep them alive in the field, to bridge the time between the time when we would have no money and the time when the Congress would vote again, to keep the effort alive, because the President committed publicly to go back, in his words, again and again and again to support the Nicaraguan resistance.[113]

Tapping Foreign Sources—The First Efforts

With the appropriated funds projected to run out in May or June, the Contras could be kept together only if an alternative source of funding could be found. The Administration began to look beyond the U.S. Treasury to foreign countries for monetary support. As early as February, North drafted a National Security Decision Directive recommending "immediate efforts to obtain additional funding of $10-$15 million from foreign or domestic sources to make up for the fact that the current $24 million appropriation will sustain operations only through June 1984."[114] While McFarlane struck this language from an official policymaking document,[115] he quietly pursued the same idea.

Looking to Country 1 for Contra Support

McFarlane testified that perhaps as early as February 1984, he considered "the possibility of in effect farming out the whole contra support operation to another country, which would not only provide the funding, but give it some direction."[116] In February or March, McFarlane pursued the idea with an official from Country 1.[117] He inquired whether Country 1 would have any interest in instructing "the contras in basic tactics, maneuver[s], and so forth."[118] Country 1 officials eventually declined the invitation.[119]

But McFarlane was not dissuaded from attempting a less ambitious plan for third-country support. On March 27, McFarlane met with Director Casey and proposed a plan to approach third countries, including Country 1, for Contra assistance. In a memorandum of that date, Casey recounted McFarlane's plan:

> In view of possible difficulties in obtaining supplemental appropriations to carry out the Nicaraguan covert action project through the remainder of this year, I am in full agreement that you should explore funding alternatives with [Country 1] and perhaps others.[120]

Others were not in "full agreement," however, about an approach to Country 1. Secretary of State George P. Shultz testified that during other discussions within the Administration about third-country funding, he questioned the legality and wisdom of any third-country approach. Shultz testified that by April 18, McFarlane knew he (Shultz) felt it was a mistake to approach Country 1 for Contra support.[121]

Nevertheless, McFarlane followed through with the plan recounted in Director Casey's March 27 memo. He directed Howard J. Teicher, the Director of Near East Affairs at the NSC, to speak to an official in Country 1's Ministry of Foreign Affairs about obtaining monetary support. Teicher made the approach, but Country 1 declined to be a part of the plan.[122] McFarlane, in a memorandum of April 20, told Teicher that he was "disappointed in the outcome but we will not raise it further . . . [w]e will not press them on the question of assistance to the contras."[123]

In May, Secretary Shultz learned of Teicher's approach from the U. S. Ambassador to Country 1, and he confronted McFarlane at the White House.[124] According to Shultz, McFarlane told him that Teicher's approach to Country 1 was without authorization and that Teicher was operating "on his own hook."[125] But Shultz later learned, to the contrary, from his Ambassador, that Teicher had made a point of telling the Ambassador he was in Country 1 at McFarlane's instructions.[126] Later, McFarlane told the Committees that he had directed Teicher to seek a contribution from Country 1.[127]

Looking to Country 6 for Contra Support

Another third-country funding option considered by the CIA during the spring of 1984 was an approach to Country 6. In his March 27 memorandum, Casey indicated that Country 6 officials already had been approached and that the initial reaction had been favorable.[128] Between April 10 and 13, 1984, Duane (Dewey) Clarridge, Chief of the Latin American Division of the CIA Directorate of Operations traveled to Country 6.[129] While there, CIA Deputy Director John N. McMahon, told Clarridge to "hold off" on his discussions because of the recent harbor mining disclosures.[130] Upon his return to the United States, Clarridge wrote:

> Current furor here over the Nicaraguan project urges that we postpone taking [Country 6] up on their offer of assistance. Please express to [Country 6 official] my deep regret that we must do this, at least for the time being, and I fully realize that he cannot crank up assistance on a moment's notice, should we decide to go forward in the future.[131]

Clarridge testified that neither Casey's March 27 memorandum nor the cable traffic (in some cases captioned, "[Country 6] Assistance to the Nicaraguan Project"[132]), represented CIA efforts to solicit Contra assistance from Country 6.[133] He conceded that the documents showed that, prior to his arrival, Country 6 had offered to aid the Contras, and that an offer may have been made as early as January 1984 in a meeting between Director Casey and a Country 6 official.[134] But before he arrived in Country 6, Clarridge testified, "a decision had been taken . . . that we would neither ask for any assistance nor would we accept any . . . ."[135] Clarridge did not explain why, if the Country 6 offer of assistance was dead before his visit, he urged on his return "we postpone taking [Country 6] up on their offer of assistance."[136]

Country 2 Contributes Funds

By May 1984, the Contras had exhausted the last portion of the $24 million Congressional appropriation for fiscal 1984. McFarlane testified that possibly as early as May,[137] he met with the Ambassador from Country 2 and explained that it was almost "inevitable that the Administration would fail" to win Congressional support for the Contras.[138] According to McFarlane, the Ambassador offered to "provide a contribution of $1 million per month, ostensibly from private funds that would be devoted to—as a humanitarian gesture—to sustenance of the Contras through the end of the year."[139] In his testimony, McFarlane denied that any solicitation of Country 2 had occurred, and insisted the Country 2 contribution was merely a gift.[140]

After receiving the contribution and informing his deputy, Admiral Poindexter, McFarlane charged North with the responsibility for arranging the transfer of funds: "[I] asked him to be in touch with the contra leaders and to find out where the bank account was kept. . . . Lieutenant Colonel North came back and provided the name of the bank, its address and the contras' account number for the bank in Miami. . . ."[141] McFarlane communicated this to the Ambassador by handing him an index card with the account number on it.[142] North testified that it was McFarlane who asked him "to establish the initial resistance account offshore to which money was sent by a foreign government."[143]

According to McFarlane, the President was informed of the Country 2 contribution shortly after it took place. McFarlane placed a note card into the President's morning briefing book. He chose this method of informing the President of the contribution to reduce any chance that others at the President's daily briefing might become aware of the funding scheme. After the meeting, McFarlane was called in to "pick up the note card which," he recalled, "expressed the President's satisfaction and pleasure that this had occurred."[144]

McFarlane also testified he informed selected members of the executive branch of the funding. "Within a day or so," he told Vice President George Bush, and at a weekly breakfast with the Secretaries of State and Defense, he "drew them aside" and informed them that the Contras would be "provided for" until the end of the year. Neither Secretary, according to McFarlane's testimony, asked the source of the funds.[145] McFarlane testified that it was "likely" he told then-Chief of Staff, James A. Baker III "[i]n the spring of '84," and that it was "possible" he told then-Counselor to the President Edwin Meese III of the Country 2 contribution.[146] McFarlane claimed he did not inform Director Casey of the Country 2 funding.[147]

But McFarlane's account was disputed by other witnesses. Secretary of Defense Caspar W. Weinberger had no recollection of being so advised by McFarlane;[148] and Secretary Shultz testified that he was told of the contribution for the first time in June 1986 after Admiral Poindexter became concerned that the Secretary of State had not been told of the Country 2 contribution.[149] Baker denied any knowledge of the contribution.[150]

The June National Security Planning Group Meeting

On June 25, the National Security Planning Group met to consider options for funding the Contras. In attendance were the President, Vice President Bush, Secretary Shultz, Secretary Weinberger, Director Casey, Meese, and McFarlane. Director Casey urged the President to seek third-country aid. Secretary Shultz responded that Chief of Staff James Baker had told him that if the U.S. Government acted as a conduit for third-country funding to the Contras, that would be an "impeachable offense."[151] Casey responded that it was permissible if the plan called for direct contributions from third countries to the Contras. Meese recalled that there was an opinion by Attorney General William French Smith that provided authority for such a plan, but also noted that if an opinion were sought, Justice Department lawyers should be given guidance on what the opinion should say. The meeting ended without any firm conclusion. McFarlane advised that no one was to do anything without the necessary Justice Department opinion. Although McFarlane had already secured the contribution from Country 2, neither he nor anyone else mentioned it.[152]

And although McFarlane had urged those at the National Security Planning Group meeting not to do anything, that very day North arranged for the transfer of Country 2 funds to Contra leader Adolfo Calero. North's notes reveal that on June 25, 1984, he told Calero that funds would be transferred "w/in 24 hrs.," through an offshore account. North issued a series of instructions to Calero: "Never let agency know of amt, source, or even availability" of the funds; "No one in our govt. can be aware"; and "Your organization must not be aware."[153]

North made these plans to send the Country 2 funds to Calero despite his apparent knowledge of the legal difficulties expressed earlier that day at the National Security Planning Group meeting. His notes reflect that he was advised of those discussions by Clarridge of the CIA. North recorded phrases such as "impeachable offense" (presumably referring to Secretary Shultz's remark), and "going to French Smith—reading on US seeking alternative funding." The note continues: "Seek 3d party funding."[154]

The next day, Director Casey met with Attorney General Smith along with members of the Justice Department and the CIA legal staff. In a memorandum recording the meeting, the CIA's General Counsel, Stanley Sporkin, reported that in response to Director Casey's question about the "legal limits" of funding options, the Attorney General stated:

> that he saw no legal concern if the United States Government discussed this matter with other nations so long as it was made clear that they would be using their own funds to support the Contras and no U.S. appropriated funds would be used for this purpose. The Attorney General also said that any nation agreeing to supply aid could not look to the United States to repay that commitment in the future. The DCI [Director of Central Intelligence] made it clear that if there is a possibility this option might be used, he would advise the CIA oversight committees.[155]

The Intelligence Committees were not advised of the Country 2 contribution until 1987.

Providing Support—The Private Network

With funds available from Country 2, North turned to creating a mechanism for providing materiel support for the Contras. "When we ran out of money," North testified, "when people started to look in Nicaragua and Honduras and Guatemala and El Salvador and Costa Rica for some sign of what the Americans were really going to do," a decision was made to create an infrastructure, what North termed a "covert operation" to provide the operational support denied by Congress.[156]

North testified that, at Casey's suggestion, he turned to Retired U.S. Air Force Maj. General Richard V. Secord: [157]

> [I]n 1984, we were approaching the proscriptions under Boland, Director Casey and I had had a number of discussions. I had made a number of trips, and obviously by then I had become much more engaged in the support for the resistance.
>
> Director Casey is the one who had suggested General Secord to me as a person who had a background in covert operations . . . and was a man who, by Director Casey's definition, got things done, and who had been poorly treated. Those were his words.
>
> I approached General Secord in 1984 and asked that he become engaged in these activities. . . .
>
> I went back to him again and at some point in '84, he agreed to become actively engaged. He agreed to establish, and did, private commercial entities outside the United States that could help carry out these activities.[158] It was always viewed by myself, by Mr. McFarlane, by Director Casey, that these were private commercial ventures, private commercial activities . . . .[159]
>
> It was clearly indicated that Mr. McFarlane and Admiral Poindexter and in fact almost drawn up by Director Casey, how these would be outside the U.S. Government, and that I told them right from the very beginning that those things that he did deserved fair and just compensation.[160]
>
> [I]t was always the intention to make this a self-sustaining operation and that there always be something there which you could reach out and grab when you needed it. Director Casey said he wanted something you could pull off the shelf and use at a moment's notice.[161]

The network, albeit privately run, was created for the purpose of pursuing "foreign policy goals." According to North: "It was never envisioned in my mind that this would be hidden from the President." [162]

The President has publicly stated that he was kept informed of some of the efforts by private citizens to aid the Contras.[163] Poindexter testified the President "knew the contras were being supported . . . by third-country funds and by private support activity. . . ." [164] There is no evidence, however, to suggest that the President was ever informed about an "off-the-shelf" covert operation.

Secord's Initial Role

General Secord had served in the Air Force until 1983, when he retired and entered private business. During his service in the Air Force, he was involved in special operations with the CIA in Laos. From 1978 to 1981, Secord headed the U.S. Air Force International Programs office.[165]

In summer 1984, Secord's first assignment from North was to assist the Contras in buying weapons with the funds sent to Calero by Country 2. In July, Secord, accompanied by his associate and former CIA operative, Rafael Quintero, met with Calero to discuss the Contras' need for low-priced weapons. He left the meeting with a weapons list.[166] Although Secord was not an arms dealer, he agreed to act as a broker to procure the weapons with his business partner, Albert A. Hakim, a naturalized American of Iranian descent.[167] In his testimony, Secord referred to the operation that he and Hakim used for Contra support as "the Enterprise." [168]

Owen's Role

North also obtained the assistance of Robert W. Owen to act on his behalf with Contra leaders. Owen was a private citizen who was a teacher before he joined the staff of Senator Dan Quayle in 1982. After leaving Senator Quayle's staff in 1983, Owen joined Gray & Co., a public relations firm in Washington, D.C.[169]

In the spring of 1984, while Owen was at Gray & Co., a Contra representative approached the firm seeking representation. Owen was asked to contact the Nicaraguan Democratic Forces (FDN). He turned to North, whom he had met the year before while working for Senator Quayle. Owen learned from North that the Contras needed money, and they discussed a plan to set up a group of European proprietary companies to purchase weapons overseas. During the discussions, North asked Owen to travel to Central America to determine the Contras' requirements over the next several months. Owen agreed.[170]

Taking a leave of absence from his firm, Owen traveled to Central America in late May or early June 1984 and met with Contra leaders. He was told, and subsequently repeated to North, that the Contras "would need $1 million a month, and if they wanted to increase in size they would need about a million and a half dollars a month." [171] Between October 1984 and March 1986, Owen made more than seven trips to Central America collecting information and delivering intelligence and money to the Contras on North's behalf.[172] He was given the code name "T.C." (The Courier), and in his own words, he served as North's "eyes and ears" in Central America.[173]

Boland II

In the summer of 1984, CIA covert assistance to the Contras began to wane as funds were depleted. Meanwhile, legislation—the second Boland Amendment—that would bar the Agency from future support for the Contras had been passed by the House in early August. According to McFarlane, as the CIA stepped out of the picture, the task of supporting the Contras fell to the NSC: "[t]he President had made clear that he wanted a job done. The net result was that the job fell to the National Security Council staff." [174]

In late August, North traveled to Central America to meet with Calero to resolve "immediate operational/logistic problems." McFarlane advised North: "Exercise absolute 'stealth.' No visible meeting. No press awareness of your presence in the area." [175] On September 1, North proposed to McFarlane that he obtain a "private donor" for a new helicopter to replace one shot down the day before. The National Security Adviser penned a note: "I don't think this is legal." [176] One month later, on October 9, North proposed a National Security Decision Directive calling "for the CIA to provide assistance to the Nicaraguan Resistance Forces in interdicting Soviet arms bound for the FSLN in Managua." Once again, McFarlane wrote on the cover sheet: "Ollie/Ken [deGraffenreid]. [177] pls check w/ CIA legal counsel promptly to confirm this is legal . . . ." [178]

By early October, Congress had adopted the Boland Amendment to an omnibus appropriations bill. Signed into law by the President on October 12, 1984, the bill would later be referred to as Boland II. It provided in relevant part:

> During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.

Similar provisions were adopted as parts of the Defense and Intelligence Authorization bills.

While Boland II cut off all funding for the Contras, it held out some hope for renewing Contra aid in the future by providing that the Administration could seek a $14 million appropriation on an expedited basis after February 28, 1985. But, even as the bill held out a future hope, its sponsors made clear that the law was intended to achieve an immediate cutoff of aid. As Representative Boland put it, the law "clearly ends U.S. support for the war in Nicaragua. Such support can only be renewed if the President can convince the Congress that this very strict prohibition should be overturned." [179]

Poindexter and North, who admitted assisting the Contras in their military activities, had a different view. Both testified that they did not believe that Boland II was applicable to the NSC staff and that while the CIA could no longer provide any assistance to the Contras, the NSC staff was free to do so.[180] Poindexter put it succinctly: "I never believed, and I don't believe today, that the Boland Amendment ever applied to the National Security Council staff. . . ." [181]

Their former superior, Robert McFarlane, was surprised by that view.[182] McFarlane, who denied authorizing the NSC staff to provide military assistance to the Contras, maintained that the "Amendment governed our actions." [183] In "cutting off money for the Contras," he understood Congress to say "we don't want any money raised for the Contras." McFarlane testified that he repeatedly addressed the NSC staff with "a kind of litany of mine, . . . [not to] 'solicit, encourage, coerce, or broker' " financial contributions for the Contras.[184] According to McFarlane, he specifically told North to "stay within the law and to be particularly careful not to be associated with or take part in any fundraising activities." [185] He dismissed his instruction to North to keep the Contras "together body and soul" as meaning nothing more than "smoke and mirrors." [186] What he intended North to provide was only moral and political, not military, support.[187]

North and Poindexter both denied hearing McFarlane's warnings against solicitation and entreaties to observe the law.[188] Both claimed that they were acting within their legal rights in aiding the

Contras. North stated that all of his acts were authorized by his superiors,[189] and Poindexter, speaking as one of those superiors, confirmed that he had given North a "broad charter" to support the Contras and had "authorized in general" North's actions in carrying out that charter.[190] McFarlane testified he was unaware of the breadth of North's activities.[191]

In any case, Poindexter and North were not deterred by Boland II in assisting the Contras. Thus, after the Boland Amendment passed, Poindexter explained to McFarlane his Nicaraguan strategy for the future: "continue active negotiations but agree on no treaty and agree to work out some way to support the Contras either directly or indirectly. Withhold true objectives from staffs." [192]

Indeed, Boland II was a spur to action. The CIA had to withdraw from supporting the Contras and, according to North, this meant he "was the only person left talking to them." [193] As North put it: "The U.S. contact with the Nicaraguan resistance was me, and I turned to others to help carry out that activity." [194] Poindexter saw it the same way:

> Very frankly, we were willing to take some risks in order to keep the Contras alive, as I said, until we could eventually win the legislative battle.
>
> So for all intents and purposes, Colonel North largely took over the—much of the activity that [the] CIA had been doing prior to their being prohibited from carrying [on] activity because of the Boland Amendment.[195]

As Poindexter summed up North's role, "[O]nce the CIA was restricted," North was the "switching point that made the whole system work . . . the kingpin to the Central American opposition . . . ." [196]

Boland II did not deter North—it simply reinforced the need to keep what he was doing secret from Congress, the public, and others in the Government. The CIA support of the Contras had not been kept from Congress—it was openly debated on the floor and was funded by appropriations. With Boland II, the assistance—now handled by the NSC staff—went underground.

Contra Aid—Fall 1984 to Winter 1985

Boland II did not cause any immediate crisis for the Contras. Steps taken months before ensured their survival. As McFarlane testified, "[T]here wasn't any need" for funds at the time.[197] The $1 million-a-month pledged by Country 2 in June 1984 would "bridge the gap" at least until December. And as North testified, by the time the Boland Amendment was passed, "General Secord had been engaged and money had started to flow to the Nicaraguan Resistance from outside sources." [198]

Arms Shipments Begin and Blowpipes Are Sought

While Secord undertook to procure weapons, North remained heavily involved. Calero testified that he consulted with North regarding weapons needs and purchases [199] and North's notebooks confirm this.[200]

In the fall, the Contras' most pressing need was ground-to-air missiles. The Sandinistas had just obtained Soviet-designed HIND-D helicopters, sophisticated assault helicopters. North devoted his efforts to finding a missile capable of shooting them down.

North learned in December 1984 that Blowpipe missiles were available in a Latin American country and, on his advice, Calero visited the country to negotiate for their purchase.[201] On December 17, Calero reported back to North that the Latin American country was willing to donate Blowpipes provided that Calero bought eight launchers for $200,000.[202] Permission was required and North tried to get that permission, recommending to McFarlane that the President take it up directly with the pertinent head of state.[203] McFarlane denied he ever asked "the President to intercede with any person for the obtaining of Blowpipes for the Contras." [204] In any event, permission was not secured and on January 3, 1985, Calero reported to North that the "Blow Pipe deal is off." [205] North would try the following year to revive it.

In the meantime, Secord had located ground-to-air missiles in Country 4. But in December, North learned that Secord was having difficulty in arranging their shipment to the Contras. North asked Gaston Sigur, an NSC consultant and expert in Far Eastern Affairs, to set up a meeting in Washington between a representative of the originating country, Country 4, and North.[206] At the meeting, North told the Country 4 official that the missiles were going to the Contras, not to the Central American country identified in the official documents.[207] North said that while he was "actually seeking to facilitate the transportation" of the missiles, he hoped that he could persuade Country 4 to donate them.[208] Ultimately, Country 4 agreed to sell the missiles to the Contras.

North sent McFarlane and Poindexter a memorandum reporting on the meeting. Although McFarlane could not recall the memorandum, he testified that it would likely have prompted him to ask "Admiral Poindexter to find out what was going on . . . and how his [North's] actions squared with the law." McFarlane did not recall how his questions were resolved.[209] North testified that McFarlane and Poindexter approved the meeting with the Country 4 representative described in his memo.[210]

Meanwhile, the Contras were also running out of basic weapons. According to Secord, in November, Secord, using money provided by Calero, made a downpayment on a shipment of arms which was to come by sea from the Far East. But the shipment was delayed and, in fact, it would not arrive until the spring of 1985.[211]

To make the first arms shipment, the Enterprise needed an end-user certificate (EUC)—a document certifying that the arms were for the exclusive use of the country to which the arms were being sent. The Contras could not issue end-user certificates because they were not a recognized government. Thus, false certificates had to be procured for the Enterprise, and again it fell to North to arrange their procurement. By the end of January, he was engaged in the task. He wrote in his notebooks: "Mtg. w/ Adolfo [Calero]-. . . . [Central American Leader] re: EUC for M-79 Rounds. [Leader of Central American country] turned down." [212] "Private mtg. w/ [U.S. Ambassador to a Central American country], offline items—EUC-$5000 M-79 Rds." [213] By early February, there was urgency in the request: Second met with North and told him that he "need[ed] to get a bunch of EUC's from [Country 14] NOW for next shipment." [214] By February 14, 1985, North had the end-user certificates, and Secord was able to ship more than 90,000 pounds of East European munitions by chartered aircraft from Defex, a European arms dealer, to a Central American country for the Contras.[215]

Providing Intelligence and Military Advice

North's role was not limited to assisting arms purchases. On direction from McFarlane, he gave political advice to the Contras on unifying the different factions and adopting a platform recognizing human rights and pledging a pluralistic society.[216] Even more critical for the Contras, North provided military intelligence and advice.

The CIA and the DOD could not provide military intelligence directly to the Contras, so North provided it himself. North would obtain maps and other intelligence on the Sandinista positions from the CIA and DOD, ostensibly for his own use.[217] North would then pass the intelligence to the Contras using Owen as a courier.[218] North explained the reasons for this system:

> Q: Did you believe that you were complying with Boland when you took intelligence from the CIA and passed it to the Contras through Robert Owen?
>
> A: Yes. And the intelligence that I passed myself personally, and it wasn't all from the CIA, much of it came from the Department of Defense.
>
> Q: And did you understand at the time that the CIA and the Department of Defense couldn't pass that intelligence directly?
>
> A: Exactly.
>
> Q: And you believed that it was compliance with Boland, that it was fulfilling the purposes of Boland for you to take the intelligence from the CIA or the Department of Defense and pass it to the Contras? That is what you are saying?
>
> A: I am not saying that it was fulfilling the purposes of Boland. I am saying it was working around the problem that Boland would have created in trying to comply with Boland that allowed me to do that.[219]

Director Casey was eager to keep the CIA bureaucracy insulated from North's activities in supporting the Contras. Indeed, in November, Casey complained to Poindexter that North was conducting his support activities "indiscreetly," [220] and had disclosed to CIA officials that he was raising funds for, and providing intelligence to, the Contras.[221]

Learning of the complaint, North wrote McFarlane on November 7, 1984, to defend his behavior. North insisted he had not implicated the Chief of the CIA's Central American Task Force in his Contra support activities. "Clarifying who said what to whom," North acknowledged that he had passed intelligence to Calero to assist him in destroying the Sandinistas' newly acquired HIND-D helicopters. North stated that he had gone to both the CIA and to the DOD for information on the helicopters' location and passed this on to Calero.[222]

North denied, however, that he had disclosed his purpose to the Chief of the Central American Task Force, or advised him about the "financial arrangements of the FDN." [223] In fact, the memo recounts a conversation showing that North misled the Task Force Chief, telling him that the intelligence request had been "a fall out of the CPPG [the Crisis Pre-Planning Group]," and that he (North) had no idea where the Contras were obtaining their funding. In the memorandum, North reported that he encouraged the Task Force Chief's impression that the funding had been obtained from "outside" sources.[224]

McFarlane testified that he did not authorize North to pass intelligence to the Contras and if, as the memo indicated, North had passed that information to Calero, Boland II would had been violated.[225] North admitted that he had provided the intelligence but maintained that Boland II did not "prevent the transfer of basic intelligence information to the Contras." [226]

In early February 1985, North became concerned about a shipment of weapons bound for the Sandinistas aboard the ship, the *Monimbo*. In a memorandum to McFarlane and Poindexter, North recommended the vessel be seized or sunk:

> If asked, Calero would be willing to finance the operation. He does not, however, have sufficient numbers of trained maritime special operations

> personnel or a method of delivery for seizing the ship on the high seas. . . . If time does not permit a special operation [on the high seas] . . . Calero can quickly be provided with the maritime assets required to sink the vessel before it can reach port at Corinto. He is in contact with maritime operations experts and purveyors of materiel necessary to conduct such an operation.[227]

North asked McFarlane for authorization to provide Calero "with the information on Monimbo" and for permission to approach him "on the matter of seizing or sinking the ship." [228]

This time, Admiral Poindexter raised a legal question, but only to advise McFarlane about how North's recommendation should be handled. On the bottom of the memorandum, Poindexter agreed with North that, "We need to take action to make sure ship does not arrive in Nicaragua. JP."[229] But in a cover note to McFarlane, Admiral Poindexter wrote:

> Except for the prohibition of the intelligence community doing anything to assist the Freedom Fighters I would readily recommend I bring this up to CPPG [Crisis Pre-Planning Group] at 2:00 today. Of course we could discuss it from the standpoint of keeping the arms away from Nicaragua without any involvement of Calero and Freedom Fighters. What do you think?[230]

No action was taken on North's recommendation to seize the *Monimbo*.

In addition to providing intelligence, North also secured the logistical assistance of a paramilitary operations expert. He described those efforts in the same December 4 memorandum to McFarlane in which he had outlined his intervention with Country 4 to secure surface-to-air missiles. According to the memo, Secretary of the Navy John Lehman had suggested to North that he meet with David Walker, a former British SAS officer, to discuss the services Walker's company could provide. North met with Walker, and proposed to McFarlane that Walker:

> establish[ ] an arrangement with the FDN for certain special operations expertise aimed particularly at destroying HIND helicopters. . . . Unless otherwise directed, Walker will be introduced to Calero and efforts will be made to defray the cost of operations from other than Calero's limited assets.[231]

In his testimony, North confirmed that he had arranged for Walker to "provide operational support for certain activities in the region," and that Walker was paid either by the Contras or Secord. This step, according to North, was approved by Poindexter or McFarlane.[232] McFarlane testified that he referred North's memo on the subject to Poindexter,[233] and Poindexter said that, if asked, he would have approved North's actions.[234]

Three months later, Walker provided two technicians to help carry out a military operation in Nicaragua. North testified that he was involved in the operation.[235] A subsequent PROF note confirms Walker's role.[236]

Singlaub Efforts with Countries 3 and 5

Country 2 had pledged funds only through the end of 1984. Therefore, by the end of the year, an urgent need existed to find money for the Contras to continue into 1985.

In late November 1984, North approved the efforts of Retired U.S. Army Maj. Gen. John K. Singlaub to obtain funds from third countries to support the Contras.[237] Singlaub met in Washington with officials of Country 3 and Country 5 to request aid. Singlaub was blunt about the Contras' needs: bullets, guns, and antiaircraft missiles. The foreign country officials, however, expressed concern about running afoul of "Congress by openly defying the Boland Amendment." At the same time they were willing to help "if this could be done in a way that did not attract attention." They agreed to send Singlaub's request to their respective governments.[238]

On November 28, Singlaub reported to North the reaction of the officials of Countries 3 and 5, informing him he "was prepared to go and meet with senior officials in those governments." According to Singlaub, North concurred and gave the plan "his blessing. . . . [I]t was a good idea, he saw no objection . . ." [239]

Whether North was authorized to "bless" Singlaub's efforts is a matter of conflicting testimony. According to McFarlane, to solicit or facilitate aid from a third country was barred by the Boland Amendment and he did not authorize North to pursue funding from third countries.[240] But according to North, he believed McFarlane had approved: "he was aware of each and every one of [my] actions to obtain money from foreign countries and approved of it."[241] North defended his actions, testifying that Country 3 had offered to make a contribution;[242] he had never made any "solicitation" because that would be an improper act for a Government official.[243]

Singlaub followed up on his request, travelling to Countries 3 and 5 in January. He met with highly placed officials and reiterated his earlier request for military donations to the Contras.[244] Singlaub provided the officials with an index card bearing the name of the bank and account number, under Calero's control, where the funds could be deposited directly.[245] Singlaub told the officials he was a private citizen, but wanted to make it clear he was not an "unguided missile ricocheting around to that part of the world." [246] He expressed the belief that "it would be possible . . . to have someone in the Administration send a signal to them . . . to indicate that [he] . . . was not operating entirely on [his] . . . own, without the knowledge of the Administration."[247]

On February 1, 1985, North's notes reflect that Singlaub called North and told him that Country 3 needed a signal that the Administration would be "greatly pleased" by a donation before Country 3 would be willing to contribute.[248] On February 6, North wrote McFarlane and reported that: "Singlaub will be here to see me tomorrow. With your permission, I will ask him to approach [the Country 3 and 5] Embass[ies] urging that they proceed with their offer. Singlaub would then put Calero in direct contact with each of these officers. No White House/NSC solicitation would be made."[249] McFarlane made no response on the memo to North's recommendations.[250]

Singlaub testified that he returned to Washington on February 7, met with North to report his results, and recounted his "entire presentation."[251] He recommended that now was the time for a U.S. Government representative to send a signal to Countries 3 and 5. According to Singlaub's testimony, North responded that he would "brief his superiors," and eventually told him (Singlaub) that he had informed his superior, whom Singlaub assumed to be McFarlane.[252]

Countries 3 and 5 did not contribute any money as a result of Singlaub's efforts. Not until late 1985, after a signal was in fact given by an NSC official, did Country 3 make a contribution.[253]

Country 2 Makes an Additional Contribution

With the Contras running out of funds, McFarlane turned once more to Country 2. McFarlane made the initial approach to its Ambassador for more funds. He testified that he did not "solicit" funds because the Boland Amendment prohibited such solicitation. He merely told the Ambassador of the plight of the Contras and hoped for a contribution.[254] According to Secord, North asked him to follow up on McFarlane's initial meeting.[255]

Secord testified that he did in fact follow up with the Ambassador, with whom he "had dealt . . . in the past with respect to possible contributions to the Contras." When Secord raised the subject, the Ambassador responded curtly, "You can stop twisting my arm . . . . I have decided to take it up with the head of state."[256] McFarlane did not recall Secord's involvement.[257]

In early February 1985, Country 2 agreed to contribute an additional $24 million.[258] McFarlane informed the President of the contribution by placing a note card in the President's daily briefing book. The President again reacted with "gratitude and satisfaction," expressing no surprise.[259] Unknown to McFarlane, the Country 2 head of state had already informed the President directly of the new contribution. But the President did not mention this when he briefed the Secretary of State and McFarlane on his meeting with the government leader.[260]

Nor did McFarlane tell the Secretary of Defense.[261] Both Secretary Weinberger and General John W. Vessey, Jr., the Chairman of the Joint Chiefs of Staff, learned of the contribution from other sources.[262] Secretary Shultz, who dealt regularly with Country 2, was not told of the contribution until June 1986.[263] This was an omission "not of conscious choice," according to McFarlane.[264]

The new donation from Country 2, like its predecessor, was sent to Calero's accounts. Between June 1984 and March 1985, Country 2's contributions, totaling $32 million, were virtually the only funds the Contras had.[265]

Contra Aid: Winter-Spring 1985

The Administration Returns to Congress

When the President signed the Boland Amendment, he made it clear he would return to Congress for additional Contra support:

> I sincerely regret the inability of the Congress to resolve the issue of continuing certain activities in Nicaragua . . . . I am signing this act with every expectation that shortly after the next Congress convenes it will provide adequate support for programs to assist the development of democracy in Central America.[266]

In the winter of 1985, the Administration pinned its hopes on obtaining the $14 million in aid held out by the Boland legislation. The law provided for expedited consideration of such a request after February 28, 1985, if the President certified to Congress that Nicaragua was supporting other Central American communist insurgencies. McFarlane conveyed to his staff, in particular to North and Donald R. Fortier, then Senior Director for Policy Development, the President's "strong wish that we not break faith with the Contras. . . . [We need] to do everything possible to reverse the course of the Congress, and get the funding renewed," he said. "[T]he mission was to win the vote the next time . . . ."[267]

The chances for success were dim from the start. The new Chairman of the Senate Intelligence Committee, David Durenberger, had warned publicly that he would oppose both the release of the $14 million and any future Contra aid.[268] But the President had not given up. He told a group of reporters, "We're going to do our best."[269]

Defense Secretary Weinberger called for an updated legislative strategy and new funding alternatives to win the battle in Congress.[270] White House officials considered a number of legislative proposals including third-country assistance and/or the supply of non-lethal aid coupled with third-country lethal assistance.[271] Legislative strategy groups met to consider the proposals. McFarlane, accompanied by North, traveled to Central America to gauge the reaction of leaders in the region. Donald Fortier was dispatched to Capitol Hill to assess Congressional sentiment.[272]

While North assisted in drafting various legislative proposals, his preferred option was to seek Congressional approval for sufficient sums to fund an increased covert action program "adequate to achieve victory."[273] North understood that foreign contributions would ensure Contra survival, but success could only be achieved with increased funding:

> [R]esources available to the resistance from sympathetic government(s) and/or individuals will permit current small-scale operations to continue for at least another 6 to 8 months. A resumption of USG funding or additional alternative resources would be essential in order to bring the scale of activity to that which existed in the spring of 1984 and, over time, to prevent an erosion of the will and determination of the FDN combatants.[274]

North was optimistic that "[w]ith adequate support the resistance could be in Managua by the end of 1985." [275]

Any legislative proposal for increased aid depended upon the Contras' survival in the field. McFarlane testified he told North that "unless the Contras become a credible military force, they would never gain political support in Congress and among the American people."[276] North was counting on the Enterprise to provide the support necessary to maintain the Contras as a viable force.

The Weapons Shipments from the Enterprise Continue

In the spring of 1985, two weapons shipments arranged by Secord in consultation with North and Calero would finally reach the Contras: first, in February, a planeload of 90,000 pounds of munitions from Europe and, second, in the spring, a sealift. Both shipments were arranged through Transworld Armament, and both apparently required end-user certificates.[277]

North needed the cooperation of Central American countries to provide documentation and to receive the shipments for the Contras. On March 5, 1985, he proposed that one country be rewarded for its assistance. In a memorandum to McFarlane, North suggested that the Secretaries of State and Defense and Chairman Vessey of the Joint Chiefs of Staff be asked to grant the Central American country additional security assistance.[278]

The "real purpose" of this memo, North explained, was to:

> find a way by which we can compensate [Country 14] for the extraordinary assistance they are providing to the Nicaraguan freedom fighters. At Tab II are end-user certificates which [Country 14] provided for the purchase of nearly $8M worth of munitions to be delivered to the FDN.[279]

In the attached memorandum to Weinberger, Shultz, and Vessey, drafted by North, the real purpose behind the request was not stated. The memorandum contained no reference to the end-user certificates, "to the arrangements which have been made for supporting the resistance through [Country 14],"[280] or to the Country 14 munitions "wish list" North attached for McFarlane's information.[281] Instead, the request for aid was predicated on its merits.

McFarlane testified that he recommended that the Cabinet approve increased assistance based solely on his assessment of Country 14's need, without taking into account its support of the Contras.[282] North testified that he had not promised a "quid pro quo." There was no "need" to make such a promise to a country threatened by the Sandinista presence, he said.[283]

Disbursements to Other Contra Leaders

During the winter and spring of 1985, North decided to use the money sent directly to Calero from Country 2 to support other Contra leaders. To do this, funds were withdrawn from Calero's account using traveler's checks, and hand-carried to North. North stored the checks in his safe. Additional cash was secured from Secord.[284]

North testified that the idea for maintaining this fund came from Director Casey:[285]

> My recollection is that the very first traveler's checks came either very late '84 or certainly early 1985 and that the sum total of traveler's checks was probably in excess of $100,000 or thereabouts.
>
> I also had cash which I estimated to be somewhere in the neighborhood of 50 to 75 thousand dollars in cash, so we are talking about an operational account that went from somewhere around 150 to 175 thousand dollars. At various points in time there would be considerable sums in it and at various points in time there would be none in it.
>
> My recollection is that I got the traveler's checks in packages of less than $10,000. I understand that others have remembered elsewise, but that is how I remember it.
>
> Those funds were used to support the operations that we were conducting. They were used to

> support the covert operation in Nicaragua, and then eventually were used to support other activities as well.
>
> The fact that I had those funds available was known to Mr. McFarlane, to Admiral Poindexter, to Director Casey, and eventually to Admiral Art Moreau over at the Pentagon. It also came to be known to others, some of whom you have had testimony here.[286]
>
> * * * * *
>
> What is important that you realize is that meticulous records were kept on all of this. I kept a detailed account of every single penny that came into that account and that left that account. All of the transactions were recorded on a ledger that Director Casey gave me for that purpose. Every time I got a group of traveler's checks in, I would report them, and I would report them when they went out, even going so far as to record the traveler's check numbers themselves.
>
> The ledger for this operational account was given to me by Director Casey, and when he told me to do so, I destroyed it because it had within it the details of every single person who had been supported by this fund, the addresses, their names, and placed them at extraordinary risk.[287]

Poindexter testified that he knew of the account almost from the start, in 1984:

> [I]t was associated with the first contribution of Country 2, I think it came to my attention, by Colonel North reporting to me, that Mr. Calero had provided some funds to him, and it was my understanding it was cash, at least that's my recollection of my understanding.[288]

Poindexter "didn't see anything illegal about it," but, as he testified, "any time you handle cash there are perception problems that can certainly develop . . . . And so I told Colonel North he should get rid of the money by returning it or whatever, that I didn't think that was a good idea."[289] In fact, the money was instead funneled to various Contra leaders throughout 1985 and 1986.

One of the principal beneficiaries of North's fund was a Resistance leader. With McFarlane's approval, North decided to assume support for the Resistance leader, using funds drawn from the Calero account.[290] North assured McFarlane that Casey had been told that North would maintain contact with the Contra leader.[291] Later, though, North reported that "the CIA will not be told of the new source for [Resistance leader's] funds."[292]

By February 27, 1985, "Adolfo [Calero] ha[d] agreed to provide [the] requisite funds in the blind without [the] [Resistance leader] becoming aware of the source."[293] Eventually, Calero was to "deposit $6,250 per month in [Resistance leader's] checking account without [his] knowledge [of the source]."[294] But before the direct deposit mechanism could be put into operation, North enlisted Robert Owen and Jonathan Miller, then-Deputy Coordinator for Public Diplomacy at the State Department, to pass the money to the Resistance leader. Sometime in early March, North handed Owen and Miller traveler's checks from his office safe, and requested that the checks be cashed. Miller and Owen did so, and returned to North's office. Later that day, at his apartment, Owen passed $6,000 to $7,000 in cash to the Resistance leader.[295]

Owen handled a number of transfers to Contra leaders. He testified that he paid "[s]omewhere between six and ten" Contra leaders, and the total amount paid was "[s]omewhere around $30,000."[296] On March 22, 1985, for example, Owen traveled to Central America carrying several thousand dollars in cash or traveler's checks for delivery to a Contra leader.[297] In some cases, Owen's efforts did not take him far from the White House itself. In April, for example, he waited outside the Old Executive Office Building in the rain. A car drove up, and Owen passed cash to a Nicaraguan Indian leader sitting inside.[298] These payments had a number of purposes: One payment was made to an Indian leader as a "quid pro quo" for ceasing negotiations with the Sandinistas and joining instead with other Indian leaders to "work together in a united front."[299]

Keeping the Operation Secret

North provided the logistical and funding assistance the Contras needed to keep going in Central America at the same time that he worked to keep their cause alive in Washington. To persuade Congress to vote for renewed aid, it was critical that the NSC staff's Contra assistance remain secret. As North warned Calero: "Too much is becoming known by too many people. We need to make sure that this new financing does not become known. The Congress must believe that there continues to be an urgent need for funding."[300]

North actively cultivated an image of Contra self-sufficiency within the Administration. For example, he urged the CIA's Chief of the Central American Task Force to reject the State Department's opinion that the Resistance had become largely ineffective since U.S. funding ran out in May 1984. "I told [the Chief of the Central American Task Force]," wrote North, "that it was important that the SNIE [Special National Intelligence Estimate] reflect the fact that there was substantial outside support which had continued for some months and showed no signs of abating."[301]

But even without such active encouragement, the secrecy shrouding North's efforts contributed to the appearance of Contra self-sufficiency. As funds arrived and weapons were shipped, CIA intelligence reports confirmed that the Contras remained not only a viable force, but were surviving on their own, without apparent U.S. Government assistance. By March, close to a year after U.S. Government aid had ceased, Director Casey's subordinates provided Casey with briefing materials, reporting surprise at the Contras' survival, but noting there was little intelligence on how the Contras had managed to flourish:

> Since the cutoff of official funds to the anti-Sandinistas in May 1984 they have been able to field a viable guerrilla fighting force, have increased their numbers, and improved their tactical efficiency. It is estimated that to maintain the level of activity that they have it would cost an estimated one and one half to two million dollars per month. There is, however, no intelligence on the source of this income, except that it comes from private groups, and possibly some U.S. business corporations.[302]

The secret of North's involvement, however, was not to last. North's name had begun to appear periodically in the press along with that of Singlaub. By March, Singlaub already had become something of a "lightning rod" in the press, attracting attention as a private fundraiser for the Contras.[303] According to Singlaub, North told him that his frequent visits to the NSC were a source of concern.[304] But North "understood and agreed" that Singlaub had to keep a "high profile" in order to raise funds, and he supported the effort. If Singlaub "had high visibility, [he] might be the lightning rod and take the attention away from [North] and others who were involved in the covert side of support."[305]

Covert Operation and Legislative Strategy Intertwine

While maintaining the secrecy of his Contra support activities, North worked to promote a legislative strategy that would change both the Congressional and the public perception of the Nicaraguan threat.[306] In March, he and Donald Fortier sponsored an elaborate plan calling for lobbying, a media blitz, and culminating in almost daily Presidential speeches and phone calls in support of the initiative. At its most ambitious stage, the plan included a 10-page, day-by-day chronology to describe each of the players' appointed tasks.[307]

At the same time, North proposed a "Fallback Plan," should Congress refuse to provide aid or lift the Boland Amendment restrictions.[308] In a memorandum to McFarlane, North noted that the Contras had sufficient funding for munitions to carry them through October 1, 1985, but they needed money for the following year.[309] The fallback plan, sent to McFarlane on March 16, called for Country 2, described as the "current donor," to contribute an additional $25 million to $30 million to the Resistance for the purchase of arms and munitions; for the President to appeal to the public for contributions instead of seeking a Congressional appropriation; and for a tax-exempt foundation to be established to receive the contributions. McFarlane rejected the idea of the Presidential appeal, expressed doubt about seeking more money from Country 2, and approved the establishment of a tax-exempt foundation.[310]

With McFarlane ruling out a return to Country 2, a return to Congress was the Administration's only hope for renewed Contra funding. During March 1985, North focused his attention on the elaborate legislative strategy plan he had been working on since late February. The plan was developed in conjunction with a peace initiative drafted by North in a Miami hotel room with FDN head Adolfo Calero and other Contra leaders, which became known as the San Jose Declaration. North arranged the deadline for a Sandinista response to the peace plan to coincide with the vote by Congress. If the Sandinistas rejected the overture, as North anticipated, then "special operations against highly visible military targets in Nicaragua," were timed to follow in the hopes that successful and "visible" Contra military activities might favorably influence Congress's decision on Contra aid.[311]

At the last minute, however, the Administration considered delaying the submission of the Administration's new aid request to Congress.[312] North recognized that if the vote were delayed, the Contras' planned military operations would not serve as an effective tool in influencing Congress's decision on the aid proposal. He strongly recommended to McFarlane that the vote take place as originally scheduled. He wrote:

> The deadline for substantive negotiations . . . was carefully chosen to ensure that the internal opposition would have a specific date for their own planning purposes. Military operations were planned based on the expiration of the offer on April 20. . . . [A]n attack is scheduled for April 25. *Based on my request* Calero has agreed to postpone the attack for five days. The force which is being inserted to conduct this operation *cannot* be logistically supported in this area after May 5. The resupply situation will require that they be withdrawn after that date.
>
> * * * * *
>
> It is my belief that urging the resistance leaders (particularly Calero) to accept a major delay . . . will result in a breakdown of the unity we have achieved. [Calero] has only cooperated to date in

the unity effort because he trusts the only persons in the U.S. Government who have supported the movement since October 1984—North and McFarlane.[313]

The Administration Responds to Congressional Defeat

In early April, the Administration submitted a Contra aid proposal to the Congress, along with its own peace plan modeled on the San Jose Declaration. The President pledged that lethal aid would only be provided if the Sandinistas rejected the proposal. The plan provoked controversy, and on April 23, the House rejected the Administration's proposal.

When the House rejected the bill, the President's first step was to reassure Central American leaders that he had not given up on Contra aid. As to one country, the President had special cause for concern: A military leader had seized ammunition intended for the Contras. The President telephoned the head of state and received an assurance that the ammunition would be delivered to the Contras.[314]

Publicly, the President expressed his determination "to return to the Congress again and again." [315] Soon after the House defeat, the Administration was back on Capitol Hill hoping to mold a compromise in support of nonlethal aid.

Meanwhile, Nicaraguan President Daniel Ortega traveled to the Soviet Union and throughout Europe, seeking renewed assistance for the Sandinista forces. President Ortega's visit to Moscow prompted the President to issue a warning to Congress:

> And whatever way they may want to frame it, the opponents in the Congress of ours, who have opposed our trying to continue helping those people, they really are voting to have a totalitarian Marxist-Leninist government here in the Americas, and there's no way for them to disguise it. So, we're not going to give up.[316]

President Ortega's Moscow trip also prompted a renewed sense in Congress that something had to be done to support the Contras. With strong support from Congressional leaders, President Reagan announced the imposition of economic sanctions against Nicaragua on May 1, 1985.[317]

Maintaining the Covert Operation

Before the Congress rejected the Administration's aid proposal, North was optimistic about the Contras' prospects. In an early April 1985 memo to McFarlane, North explained what the operation had achieved up to that point, and the plans he had for its future.[318] Based on information provided by Calero, North outlined what the Contras had spent "since USG funding expired in May 1984."[319] Of the "grand total" of $24.5 million received by Calero, "$17,145,594 has been expended for arms,[320] munitions, combat operations, and support activities."[321] Extolling the FDN's nearly twofold increase in size, and its newly acquired expertise in guerrilla warfare, North emphasized that the money had been spent wisely: "In short, the FDN has well used the funds provided and has become an effective guerrilla army in less than a year."[322]

The image of Contra military capability cultivated by North was arguably at odds with reality. U.S. Army General Paul F. Gorman, Commander of the Southern Command from May 1983 through February 1985, told the Committees that "the prospects of the Nicaraguan resistance succeeding [were] dim at best." Specifically referring to Congressional testimony he gave in June and December 1985, Gorman testified:

> what I was saying in those days was that I did not see in the Nicaraguan resistance a combination of forces that could lead to the overthrow of the government or the unseating of the Sandinistas. . . . The training of the Contras was, when I last saw them in 1985, abysmal. . . . I didn't regard them as a very effective military organization, based on what I could see in reflections of battles, in communications on both sides. The Sandinistas could wipe them out.

Regarding North's reaction to his views, Gorman added:

> Oliver was terribly concerned about my attitude, and he knew that I was travelling up here on the Hill and in other circles where I was being asked to comment on the prospects of these people.
>
> Q: I take it Colonel North, who had been your friend . . . was not pleased with the position you were taking?
>
> A: No. . . . I made a speech over at the National Defense University which was reported in the Washington Post . . . and Oliver . . . got very exercised because in it I said . . . I can't see any amount of money or any amount of time, given the present set of conditions, that would be efficacious. . . . Oliver got very exercised about that and called me and said would you try to put together an op ed piece . . . which he allegedly was going to get placed in the Washington Post. It never was, and I gather it's because what I wrote displeased him.

Gorman concluded by telling the Committees, "it was also very clear to me, he [North] saw me as a problem in terms of what I was saying, and I think he was just doing his damndest to get me to shut up—old General, put a cork in it."[323]

In the spring, North had made ambitious plans for the Contras' future, according to his April 11 memo. The force would be increased in size. Two special operations were planned: an "attack against Sandino airport with the purpose of destroying" Sandinista HIND-D helicopters; and a "ground operation against the mines complex" in Nicaragua securing the principal lines of communication in and out of Puerto Cabezas. Finally, North told McFarlane the Contras would open a Southern front.[324]

These plans were soon stalled, though, when in late April, Congress rejected the Administration's funding request. The defeat precipitated a crisis atmosphere among Contra leaders, who had planned on renewed Congressional funding. There were daily contacts between Contra leaders and North, and between North and the CIA Chief of the Central American Task Force. The problems of the Resistance were further complicated when one Central American country, responding to Sandinista encroachment, ordered the Contras to move to less exposed locations.[325]

Meanwhile, in Congress, a consensus was building in favor of humanitarian aid. By May 15, 1985, Congressional leaders were seeking counsel from the NSC on the Administration's position about a Contra support bill that was limited to nonlethal aid. North, along with other NSC staff members, drafted talking points for a meeting between McFarlane and Minority Leader Robert H. Michel, emphasizing that the "primary goal" was to lift the Boland Amendment restrictions, "which severely limit our ability to support/advise the now unified Nicaraguan resistance."[326]

By the end of May, North was optimistic that the Boland Amendment restrictions would be lifted, at least with respect to the CIA's provision of intelligence and political support. But even if they were lifted, and Congress appropriated humanitarian aid, North did not contemplate that his covert operation would end. He told McFarlane in a May 31 memo:

> Plans are underway to transition from current arrangements to a consultative capacity by the CIA for all political matters and intelligence, once Congressional approval is granted on lifting Section 8066 [Boland Amendment] restrictions. The only portion of current activity which will be sustained as it has since last June, will be the delivery of lethal supplies.[327]

The Secord Group and Its Competition

As humanitarian aid measures were debated in Congress, Secord's Enterprise was continuing to procure weapons for the Contras. By May, Secord was using Thomas G. Clines, rather than the original broker. Clines' source was a European arms dealer.[328] Secord was also using Rafael Quintero to handle the logistics of the arms deliveries in Central America. As North put it, Quintero was the "Secord man on [the] scene."[329] He coordinated the arms reception in Central America, and "all of the liaison with the Contras and with the local authorities."[330] From Quintero, Secord would obtain the information necessary to provide North with what North termed "views from on [the] scene" in Central America.[331] Clines, Quintero, and Secord were to play an increasingly large role in the Contra support structure as the summer progressed.

During May, Secord arranged through Clines for the third in a series of arms transfers to the Contras. This time, the shipment was to arrive by sea.[332] Periodically, Secord would call North with the latest update, as on May 8: "Came out of mtg/ in . . . now in Paris; -Tested every item; -ship arrived 4-5 hours ago; -40,000 M-79 . . . ."[333] Later, on May 24, North recorded: "Call from Dick; -Vessel needs shipping agent for receiving; -Need to do long lead plan for Aug-Sep delivery; -need to make deposit for M-79 buy."[334] As Secord testified, North "was in the information collection business" and "[h]e wanted to know if I would provide him with details of any deliveries or deals that were made, and I did so gladly."[335]

General Secord was not the only weapons dealer seeking the Contra account during the summer of 1985. For example, Ronald Martin, a Miami arms dealer, was by May "setting up [a] munitions 'supermarket' " in Central America.[336] As North testified: "You had a very competitive environment down there. Once the U.S. Government withdrew in '84 from directly supporting the resistance, you ended up with a lot of folks out there running a very cutthroat business."[337]

North discouraged Calero from dealing with some of Secord's competitors. He testified that CIA Director Casey had suspicions that the arms warehouse operation run by Martin was supported by U.S. funding that had been diverted to Martin by a Central American country. According to North, Casey told him "that there shouldn't be any further transactions with that broker until such time as he resolved or they were able to resolve where" the money to stockpile "several millions of dollars worth of ordnance" had come from.[338]

Secord's other competitor for procuring arms for the Contras during the spring of 1985 was General Singlaub. As early as April, Singlaub had begun to arrange for a major weapons purchase, after meeting at FDN base camps in March with the FDN military commander, Enrique Bermudez.[339] The list of weapons Singlaub drew up with Bermudez included AK-47 rifles, RPG-7 rocket launchers, light machine guns, and SA-7 surface-to-air missiles. Singlaub took the weapons list to North, who made "some additions and subtractions." North and Singlaub "reach[ed] a clear-cut statement of what we were going to buy."[340]

Sometime later that month, Singlaub introduced Calero to a European arms dealer.[341] Calero was astonished at the low prices he had been quoted; "at least in the case of the AK-47s that price was about half of what we had previously had to pay."[342] (In part, this can be attributed to the fact that Singlaub did not take a commission.)

According to Singlaub, North later confirmed that the prices quoted by the European arms dealer were lower than anything he had ever seen before. Confronted with the price list, North "expressed some surprise, doubt, that they could be purchased for that price." But, he "made it quite clear that that was a very, very good price and a bargain. We were getting twice as many weapons for the same amount of money."[343] In his testimony, North maintained that he checked Secord's prices against the prices of other dealers: "[s]ome were higher, some were lower."[344]

Part of the explanation for the difference between Secord's prices and those of Singlaub's dealer was Secord's profit margin—a margin of which Calero was unaware. Secord testified that his markup on all Contra shipments "averaged out almost exactly 20 percent."[345] In fact, the actual commission charged on the cost of arms averaged 38 percent.[346]

In Secord's own words:

> By the way, this was a strict commercial kind of transaction. There was nothing spooky about it. It was just a normal brokering deal. The prices were marked up in the process, different markups for different line items depending upon the size, but between 20 and 30 percent was the markup which is quite low in the arms business.[347]

Secord candidly admitted that he was to make a profit:[348]

> Q: I take it from what you are saying that you were to make a profit on these arms transactions?
>
> A: Yes . . . . It was intended that the profits generated would be shared by Hakim, myself, and, of course, the arms dealer.[349]

Calero testified he was unaware that Secord was earning money off the arms sales. He believed that Secord was supplying the weapons at cost.[350] "My understanding, right from the beginning, was that he was not making a profit," Calero recalled.[351] North, on the other hand, testified that it was his understanding from his conversations with Casey in 1984 that those running the off-the-shelf covert entities were entitled to fair compensation:[352] "The arrangement that I made with General Secord starting in 1984 recognized that those who were supporting our effort were certainly deserving of just and fair and reasonable compensation."[353]

Calero Tries Singlaub

In early May, Calero and Singlaub met with Secord in North's office to discuss procuring SA-7 missiles.[354] Although Singlaub's price was lower than Secord's, North and Calero decided that Secord should supply the missiles because Secord was prepared to provide training and Singlaub was not.[355]

Sometime in mid-May, Calero placed an order for weapons—other than SA-7s—through Singlaub's dealer. Calero "preferred" dealing with Singlaub, rather than Secord, because not only was Singlaub a closer personal friend, but also his prices were lower. Singlaub told Calero that he believed Secord was making a profit. Secord, on the other hand, told Calero that Singlaub would be unable to deliver: "The price was so, you know, so low that he thought he [Singlaub] couldn't make, he couldn't do it. Yes, he [Secord] told me that, yes."[356]

North's notes reflect an unsuccessful attempt to persuade Calero not to deal with Singlaub via the European arms dealer.[357] On May 17, Secord met with North and discussed pending weapons transactions, including Martin's munitions supermarket and the "Singlaub deal w/ A.C; -[European arms dealer] . . . .; - 10K AK47s; -procuring items from USSR . . ." [358] An hour and 20 minutes later, North spoke to Calero and noted, "will stop move w/ [European arms dealer]." [359] But despite Calero's apparent decision to stop the Singlaub deal, Secord informed North on May 20 that it "[s]ounded like Calero was going to have to go through with [the European arms dealer] purchase." [360]

North appears to attribute to Director Casey his reluctance to procure arms through the European dealer. According to North, Casey warned him of "a transaction of some five to six million dollars from a broker who he was concerned had also been involved in reverse technology transfer to the Eastern Bloc, and he told me to do everything possible to discourage further purchases."[361] Although North did not name the dealer, his reference to a "transaction of some five to six million dollars" points to the European arms dealer. The arms dealer denied to the Committees any involvement in reverse technology transfers.[362]

The purchase that Singlaub arranged did in fact go forward after Owen, at North's request, confirmed the list with Calero. The arms arrived in Central America on July 8, 1985.[363]

This was the last shipment Calero was to order from Singlaub or any arms dealer other than Secord. The Singlaub shipment had nearly exhausted the funds in Calero's own accounts. Calero told North in May, "[I] have enough to cover this [shipment] but [it] will leave nothing."[364] Thereafter, money raised by North and Secord was given directly to Secord, who then provided the Contras with arms. Calero testified he was "never given a reason" why his "authority to have cash directly sent to [him] to make those purchases in the future was taken away."[365]

Chapter 2

1. See R. McFarlane Memo, 2/27/81, to Secretary Haig, N33323-47 (forwarding Director Casey's proposal).

2. See "Review of Foreign Policy," House Foreign Affairs Committee, 97th Cong., 1st Sess., 16-17 (Nov. 12, 1981) (state-ment of the Hon. Alexander M. Haig, Jr., Sec'y of State).

3. Earlier, in March 1981, the President had authorized a CIA covert program for Central America in general.

4. George Test., *Hearings*, 100-11, 8/6/87, at 269.

5. Inman Int., 3/16/87.

6. Gregg Memo, 7/12/82, to Clark,"Proposed Covert Action Finding on Nicaragua," N44654.

7. Gregg Memo, 7/12/82, to Clark, "Proposed Covert Action Finding on Nicaragua," N44654.

8. *Id.*

9. *Id.*

10. *Id.*

11. Poindexter handwritten note, attached to Gregg Memo to Clark, 7/12/82, "Proposed Covert Action Finding on Nicaragua," N44652.

12. Gregg Memo, 7/12/82, to Clark, "Proposed Covert Action Finding on Nicaragua," N44656.

13. See e.g., Newsweek, Nov. 8, 1982, at 43.

14. See, e.g., Cong. Rec. H9148-49 (Dec. 8, 1982) (statement of Rep. Harkin).

15. See The Washington Post, April 3, 1983 at A13 (quoting Contra leaders rejecting the Administration's explanation for Contra aid: "The people who are fighting, they are not fighting to stop the weapons. . . . We are fighting to liberate Nicaragua. As Suicide [a Contra leader] put it . . . We're not going to stop the transport of arms and supplies to the Salvadoran guerrillas until we cut the head off the Sandinistas.)

16. See Cong. Rec. H9149 (Dec. 8, 1982) (statement of Rep. Leach); *id.* at H9151 (statement of Rep. Mikulski); *id.* at H9153 (statement of Rep. Studds).

17. See Cong. Rec. H9149 (Dec. 8, 1982) (statement of Rep. Leach); *id.* at H9158 (statement of Rep. Matsui).

18. See Cong. Rec. S15363-64 (Dec. 18, 1982) (statement of Sen. Helms).

19. Pub. L. 97-377, Defense Appropriations Act for FY 1983, Sec. 793. In enacting the Boland Amendment, the Congress re-jected a bill that would have barred all covert action funding, as well as an amendment that would have barred Administration support of any insurgent group having the purpose to overthrow the Nicaraguan Government. See "The Boland Amendment," Chapter 26.

20. Since 1982, the Administration has taken the position that, under the Boland Amendment, it was the agency's purpose that was controlling, not the Contras' purpose. See Opinion of the Intelligence Oversight Board, Apr. 6, 1983, J4825; "The Boland Amendment," Chapter 26.

21. Cong. Rec. H9156 (Dec. 8, 1982) (statement of Rep. Boland); "The Boland Amendment," Chapter 26.

22. The New York Times, Dec. 9, 1982, at A9.

23. Select Committee on Intelligence, S. Rep. No. 665, 98th Cong., 2d Sess., at 5 (1984) (hereinafter "S. Rep. 98-665").

24. Letter, from 37 Congressmen, 3/24/83, to the President, HF1367; see Turner Memo, 4/6/83, to the President's Intelligence Oversight Board, at 17, J4824.

25. *Newsweek*, April 11, 1983, at 46.

26. 1983 Public Papers of the President of the United States, Ronald Reagan, Vol. 1, at 539 (April 14, 1983) [hereinafter "Presidential Papers"].

27. *Id.* at 541.

28. *Id.*

29. See The Washington Post, April 3, 1983 at A3 (statement of Sen. Daniel Moynihan).

30. 1983 Presidential Papers, Vol. 1, at 603-04 (April 27, 1983).

31. In June 1983 a CBS/New York Times poll showed that the public opposed helping the Contras try to overthrow the Nicaraguan Government by 53 percent to 23 percent. New York Times, July 1, 1983, at A2. In September, a Harris survey showed 60 percent opposed, and 24 percent favored, U.S. Government support for the Contras. The Harris Survey, 9/29/83, at 3.

32. See Gorman Dep., 7/22/87, at 25-32; McFarlane Test., *Hearings*, 100-2, 5/11/87, 9-10, 21.

33. S. Rep. 98-665 at 5-6.

34. H.R. 2760 was sponsored by Representative Edward P. Boland, then Chairman of the House Intelligence Committee and Representative Zablocki, then chairman of the Committee on Foreign Affairs. See H. Rep. 122, 98th Cong., 1st Sess., Part 1 at 1; Part 2 at 2 (May 13, 1983).

35. See H. Rep. No. 122, 98th Cong., 1st Sess., at 4.

36. Cong. Rec. H5880-81 (July 28, 1983).

37. See Cong. Rec. H5721-62 (July 27, 1983); *id.* at H5819-82 (debate on Boland-Zablocki). Ultimately, the Boland-Zablocki legislation was never considered by the Senate, and did not be come law. See "The Boland Amendment," Chapter 26.

38. Clark Memo, 7/1/83, to SPG Principals, S9243.

39. *Id.*

40. Report to the Senate Committee on Foreign Relations: Subj: "Conferral of Personal Rank of Ambassador," S9516.

41. S9468.

42. In its first year,—S/LPD claimed credit for 1,500 speaking engagements and for sending material to 239 editorial writers in 150 cities. Comptroller General's Report, 2/8/85, S9391. It published pamphlets, such as "Broken Promises: Sandinista Repression of Human Rights in Nicaragua, "The Sandinista Military Build-up, "Misconceptions About U.S. Policy Toward Nicaragua," all for the purpose of "Spreading the President's Message to the Public, the Media and the Congress." Gardner Memo, 6/25/85, to Twohie: Subj: "Current Program of S/LPD," S9441.

43. See Chapter 4.

44. J. Miller Memo, 3/13/85, to P. Buchanan: Subj: " 'White Propaganda' Operation," S9418.

45. Reich Memo, 3/1/86, to W. Raymond, S9460.

46. *Id.*

47. Comptroller General Letter, 9/30/87, to Hon. Jack Brooks, Hon. Dante Fascell, at S11655.

48. *Id.* at S11652.

49. *Id.* at S11656. The State Department's Inspector General concluded in Audit Report No. 7PP-008 (July 1987) that "there is no evidence that S/LPD staff participated directly or indirectly in any unlawful lobbying or that IBC spent S/LPD contract funds for lobbying activities."

50. Vessey Memo, 9/6/83, to Chief of Staff, U.S. Army *et al.*, Subj: "DoD Support for the DCI," at D15331.

51. See DOD "Background Paper," D15321 (July 13, 1983 "wish list"); see Information Paper, 4/14/87, D13718 (referring to the CIA's original request as a "Christmas List").

52. Memo, Subj: "Supplies Needed to Support Nicaraguan Resistance Effort," D15249; Memo for the Record, 7/15/83, Subj: "CIA Request for DoD Support," D15356-364.

53. See DoD Memo, 7/28/83, to Chief of Staff, U.S. Army, Chief of Naval Operations, Chief of Staff, U.S. Air Force, Commandant of the Marine Corps: Subj: "DOD Support for the DCI," D15344.

54. This effort has been addressed generally in the press. See, e.g., *U.S. News and World Report*, Dec. 15, 1986, at 27-28.

55. DOD Memorandum for the Director, J-3, The Joint Staff, 8/19/83, Subj: "DoD support for the DCI," D15338-40; DOD Memo, 12/9/83, "Background Paper for the Director," D13760 (chronology of project developments).

56. W. Taft IV Memo, 9/2/83, to Weinberger: Subj: "CIA Request for DoD Support of Covert Activities in Nicaragua," D25051 ("The CIA has been disappointed with our pointing out this difficulty; it has suggested that it has insufficient funds to support such activities on its own").

57. CIA paid the preparation and transfer cost of $28,000, but not the equipment cost of the aircraft. See DOD Memo, 12/9/86, "Background Paper for the Director," at D13762-63.

58. Clark Memo, "Meeting with National Security Planning Group," N49258; see also S. Rep. 98-665 at 6.

59. North/deGraffenreid Memo, 9/15/83, to Clark: Subj: "NSPG Meeting on Covert Action in Nicaragua," N49255.

60. NSC Handwritten Notes, 9/16/83, N54822.

61. Presidential Finding Scope Paper, 9/19/83, N6783.

62. Presidential Finding Scope Paper, 9/19/84, N6783.

63. NSC Handwritten Notes, 9/16/83, N54823 (emphasis in original).

64. Presidential Finding, 9/19/83, N6780-82.

65. S. Rep. 98-665 at 6.

66. See Minutes of 5/16/86 NSPG Meeting, 6/4/86, N10288.

67. S. Rep. 98-665 at 6 (quoting The New York Times); see Casey Memo, 9/27/83, to Clark, N6787-89.

68. See Cong. Rec. H8389-432 (Oct. 20, 1983).

69. See H.R. Rep. 98-569

70. See Cong. Rec. H10543-45 (Nov. 18, 1983); *id.* at S16859-60.

71. Intelligence Authorization Act, FY 1984, sec. 109.

72. SIG Paper, 12/20/83: Subj: "Where Next in Central America," at N32314.

73. C. Hill Memo, 12/20/83, to McFarlane: Subj: "Next Steps in Central America," N32308.

74. The Special Interagency Working Group consisted of representatives from the State Department, CIA, DOD, NSC, Joint Chiefs of Staff and the White House. See Memo, 9/23/83, Subj: "Legislation on Nicaragua," N6883. Later, an interagency policymaking group on Central America would be called a Restricted Interagency Group or "RIG."

74a. SIG Paper, 12/20/83: Subj: "Where Next in Central America," at N32314; see McFarlane Memo, 1/6/85, Subj: "Meeting with the National Security Planning Group," at N46540 (summarizing SIG strategy paper).

75. McFarlane Memo, 1/6/85: Subj: "Meeting with the National Security Planning Group," N46450; NSDD 124 (approving measures outlined in the SIG paper, "Where Next in Central America," N32308-359).

76. North/Menges Memo, 10/19/83, to McFarlane: Subj: "Special Operations: Nicaragua," N44721.

77. North/Menges Memo, 10/19/83, to McFarlane: Subj: "Special Operations: Nicaragua," N44721.

78. Attachment to North/Menges Memo, 12/22/83, to McFarlane: Subj: "Anti-Sandinista Actions," at N30844.

79. McFarlane Memo, 2/17/84, Subj: "Meeting with the National Security Planning Group," at N40040

80. North Memo to McFarlane, 2/3/84, Subj: "Attack on Guerrilla Command and Control Centers in Nicaragua," at N44831.

81. North/Menges Memo, 3/2/84, to McFarlane: Subj: "Special Activities in Nicaragua," at N44842.

82. North Memo, 3/30/84, to McFarlane: Subj: "Nicaragua Special Activities Program," at N34514.

83. See North Personnel File, D6087, D6089.

84. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 41-42; McFarlane Test., *Hearings*, 100-2, 5/11/87, at 31.

85. Poindexter Test., *Hearings*, 100-8, 7/15/87 at 41-42 McFarlane Test., *Hearings*, 100-2, 5/11/87, at 31-32; Gregg Int., 4/2/87, at 4, 6; P.X. Kelley Int., 9/30/87, at 7.

86. McFarlane Test., *Hearings*, 100-7, 7/14/87, at 203, 221.

87. Hall Test., *Hearings*, 100-5, 6/8/87, at 466; see North Test., *Hearings*, 100-7, Part II, 7/13/87, at 55-56.

88. Gregg Int., 4/2/87, at 4; Ledeen Dep., 6/19/87, at 33; Earl Dep., 5/22/87, at 29.

89. Letter, 11/7/83, J. Hull to R. Owen, N7460.

90. North's notes reveal frequent Contra-related contacts during this period between North and Dewey Clarridge, then Chief of the Latin American Division of the CIA's Directorate of Operations. See North Notebooks, 1/84-3/29/84, Q0011-0165.

91. See, e.g., North memo, 3/30/84, to McFarlane: Subj: "Nicaragua Special Activities Program," N34514; North/Menges Memo, 3/2/84, to McFarlane: Subj: "Special Activities in Nicaragua," N44842.

92. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 40; North Test, *Hearings*, 100-7, Part I, 7/9/87, at 244-45.

93. North Test., *Hearings*, 100-7, Part I, 7/9/87, at 245.

94. North/Menges Memo, 11/4/83, to McFarlane: Subj: "Support for Nicaraguan Democratic Opposition," N40079, N40081.

95. North Memo, 2/3/84, to R. McFarlane: Subj: "Attack on Guerilla Command and Control Centers in Nicaragua," N44831-32; see North/Menges Memo, 1/23/84, to McFarlane: Subj: "Targeting Guerilla Command and Control Centers in Nicaragua," N44837.

96. See, e.g., North/Menges Memo, 10/19/83, to McFarlane: Subj: "Special Operations: Nicaragua," at N44721; North/Menges Memo, 12/22/83, to R. McFarlane: Subj: "Anti Sandinista Actions," at N30842; North Memo, 3/30/

84, to McFarlane: Subj: "Nicaragua Special Activities Program," at N34515.

97. North/Menges Memo, 12/22/83, to McFarlane: Subj: "Anti Sandinista Actions," N30841; see North Memo, 3/30/84, to McFarlane: Subj: "Nicaragua Special Activities Program," N34514.

98. George Test., *Hearings*, 100-11, 8/6/87, at 269.

99. Poindexter Dep., 5/2/87, at 63.

100. North Forwarding Note to McFarlane, 2/13/84, N16901.

101. North/Keel Memo, 2/7/84, to McFarlane: Subj: "Additional Resources for Our Anti-Sandinista Program," N16908 (attached to North Forwarding Note, 2/13/84, N16901).

102. McFarlane Memo, 2/21/84, to the President: Subj: "Central America Legislative Strategy—Additional Funding for the Anti-Sandinista Forces," N16894.

103. Los Angeles Times, Apr. 13, 1984, at 1.

104. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 13.

105. The National Security Adviser later expressed his regret about "lapses," such as the "failure to brief the Committees on the San Juan del Norte operation." McFarlane, PROF Note, 5/4/84 at 17:57:43, to Poindexter, N7091; see also deGraffenreid Memo, 6/13/84, to McFarlane: Subj: "Prospectus on New Covert Action Procedures," N7094 ("with the exception of the special measures on Nicaragua (mining . . . etc.) our Hill briefings have been timely and thorough").

106. S. Rep. 98-665 at 8 (quoting Goldwater statement).

107. See, e.g., Weekly Presidential Documents, Vol. 20, No. 15, at 517-18 (Apr. 10, 1984 statement); McFarlane letter, 4/5/84, to Sen. H. Baker, N43406-07 ("Please be assured that we have not deviated from the strictest interpretation of this Finding.")

108. S. Rep. 98-665 at 8-9.

109. S. Rep. 98-665 at 10.

110. Los Angeles Times, April 13, 1984, at 9.

110a. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 5, 20-21. McFarlane testified these were his words, expressing the President's "sentiment." McFarlane Test., *Hearings*, 5/11/87, at 21. North testified that, "[a]s they were relayed to me," the words 'body and soul' "were the words of the President." North Test., *Hearings*, 100-7, Part I, 7/9/87, at 265.

111. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 54.

112. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 74.

113. North Test., *Hearings*, 100-7, Part I, 7/9/87, at 265. North testified that he received this assignment around the time of the Kissinger Commission Report, which was released Jan. 10, 1984. Report of the National Bipartisan Commission on Central America (H. Kissinger, Chairman); North Test., *Hearings*, 100-7, Part I, 7/13/87, at 79. McFarlane dated the instruction "in the days leading to Boland II," which was enacted in October 1984. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 221.

114. North/Menges Memo, 1/13/84, to McFarlane: Subj: "Central America—Draft NSDD to Implement NSPG Decisions of January 6, 1984," N43397 (emphasis added).

115. Memo, North/Menges, Memo, 1/13/84, to R. McFarlane: Subj: "Central America—Draft NSDD to Implement NSPG Decisions of January 6, 1984," handwritten changes, N43397.

116. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 14.

117. The Committees agreed at the request of the White House that, in the interest of U.S. foreign relations, certain foreign nations which were approached or enlisted for Contra aid would not be referred to by name. Accordingly, those countries were given numerical designations.

118. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 15.

119. The idea that Country 1 might fund U. S. ventures in Central America was not a new one for McFarlane. In the spring of 1983, he learned that Country 1 might be willing to provide security assistance and agricultural training to other countries. In a note to Oliver North recounting this offer, McFarlane mused that since the U. S. appropriation to Country 1 increased every year, perhaps it would be willing to sign over the increase for use in Central America.

120. Casey Memo, 3/27/84, to McFarlane, RCM Ex. 29 at 456, C7490. Casey already had devised his own plan for raising additional funds. In the March 27 memorandum, he indicated that two initiatives already were underway at the CIA to provide the Contras with weapons and other materials: one involved an arrangement with Country 1, and the other involved an approach to Country 6. Neither effort produced any significant Contra assistance. *Id.*, C7490.

121. Shultz Test., *Hearings*, 100-9, 7/23/87, at 13.

122. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 15-16; Teicher Dep., 4/23/87, at 15.

123. McFarlane Memo, 4/20/84, to Teicher, RCM Ex. 30 at 459, N10576. Secretary Shultz was unaware of the substance of this memo. Shultz Test., *Hearings*, 100-9, 7/23/87, at 14-15.

124. Shultz Test., *Hearings*, 100-9, 7/23/87, at 13-14.

125. Shultz Test., *Hearings*, 100-9, 7/23/87, at 13-14.

126. Shultz Test., *Hearings*, 100-9, 7/23/87, at 13-14.

127. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 15-16.

128. Casey Memo, 3/27/84, to McFarlane, C7490. See also CIA Cable, 3/8/84, DRC Ex. 19, CIA Cable, 3/10/84, DRC Ex. 19-1.

129. CIA Cable from D. Clarridge, 4/5/84, DRC Ex. 19-11; *id.*, 4/12/84, DRC Ex. 19-15.

130. CIA Cable, 4/10/84, DRC Ex. 19-14.

131. Clarridge Test., *Hearings*, 100-11, 8/4/87, at 31; CIA Cable, from D. Clarridge, 5/11/84, DRC Ex. 19-18.

132. See, e.g., CIA Cables, 3/23/84, DRC Ex. 19-2; *id.*, 3/24/84, DRC Ex. 19-3; *id.*, 4/2/84, DRC Ex. 19-5; *id.*, 4/3/84, DRC Ex. 19-6; *id.*, 4/4/84, DRC Ex. 19-7.

133. Clarridge Test., *Hearings*, 100-11, 8/4/87 at 29-32.

134. Clarridge Test., *Hearings*, 100-11, 8/4/87, at 29-30, 32-33.

135. Clarridge Test., *Hearings*, 100-11, 8/4/87, at 34. Clarridge also defended the Agency's conduct by emphasizing that Country 6's early offer was rejected because it turned out Country 6 wanted reimbursement and that Country 6 sought a bilateral arrangement with a Central American country, not the Contras specifically. Clarridge Test., *Hearings*, 100-11, 8/4/87, at 28-32.

136. CIA Cable from D. Clarridge, 5/11/84, DRC Ex. 19-18.

137. McFarlane Test., *Hearings*, 100-2, 5/12/87, at 84.

138. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 17.

139. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 17.

140. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 17:

> I should stress, I described it as it happened, and while there is no solicitation, cry for solicitation, in fact it was unmistakable in his own mind that my concern and my view of this impending loss would represent a significant setback for the President,

> and if anyone with any gumption could manage without being led or asked, then a contribution would have been welcome.

141. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 17-18. North's notes show that the arrangements were made by June 25. On June 24, he noted "call to RCM re arrangements" and on June 25 he noted that he had told Calero the funds were on their way. North Notebook, 6/24/84, Q0338; *id.*, 6/25/84, Q0340. Bank records show the payment was actually received in Calero's account on July 6, 1984. Bank Records, O318.

142. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 18.

143. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 80.

144. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 18-19.

145. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 18.

146. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 53.

147. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 24.

148. Weinberger Dep., 6/17/87, at 74 (denying any knowledge of a Country 2 contribution).

149. Shultz Test., *Hearings*, 100-9, 7/23/87, at 4; Poindexter Test., *Hearings*, 100-8, 7/15/87, at 78-79.

150. Baker Dep., 6/22/87, at 12. Attorney General Meese did not testify on this issue.

151. Baker did not recall "using that language or having a specific opinion such as that, although I do, as I have stated, recall feeling that we should take a very close look at the question of legality and feeling that we could not do indirectly what we couldn't do directly." Baker Dep., 6/22/87, at 8-9.

152. See Shultz Test., *Hearings*, 100-9, 7/23/87, at 14-17.

153. North Notebook, 6/25/84, Q0340 (emphasis in original).

154. North Notebook, 6/25/84, Q0343.

155. Sporkin Memo for Record, 6/26/84, Subj: "Nicaragua," C8322. Secretary Shultz testified that, as far as he knew, no Justice Department opinion was ever obtained. Shultz Test., *Hearings*, 100-9, 7/23/87, at 17-18.

156. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 74.

157. North Test., *Hearings*, 100-7, Part I, 7/8/87 at 116. There is some evidence that Secord may have been involved in another covert operation prior to the Contra project. In an Apr. 27, 1984, notebook entry, North relates what appears to be an arms deal with Country 1 ("Team to [Country 1] $54 million worth of arms"). Later the note states: "McFarlane talked to [Country 1 official] Can't produce $; *similar to Secord arrangement;* 65 lift vans; $750K." North Notebook, 4/27/84, Q0228 (emphasis added).

158. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 116.

159. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 117.

160. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 117.

161. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 122. As recounted by North, Casey's plan mirrored the suggestions of others. It was about this time that Robert Owen, who would become North's courier, provided him with a plan for "setting up proprietary companies . . . to purchase goods overseas and provide assistance to the contras." Owen Test., *Hearings*, 100-2, 5/14/87, at 325-26.

162. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 46.

163. See The New York Times, May 16, 1987, at A1 ("As a matter of fact, I was very definitely involved in the decisions about support to the freedom fighters. It was my idea to begin with.")

164. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 228.

165. See Secord Test., *Hearings*, 100-1, 5/5/87, at 46.

166. Secord Test., *Hearings*, 100-1, 5/5/87, at 48-49. On July 26, North had a conversation with Gen. Secord, and his notes report the involvement of "Chi Chi" Quintero:

L-100 Shipping prices
Shipping Agent—Raphael Chi Chi Quintero
Cuban/Miami
  knows maritime ops
  knows logistic support
  would make a logistics advisor
  travels in region frequently
  Canadian Arms dealer—Century Arms Ltd.

North Notebook, 7/26/84, Q0448.

167. Secord Test., *Hearings*, 100-1, 5/5/87, at 50-51; Hakim Test., *Hearings*, 100-5, 6/3/87, at 200.

168. Secord Test., *Hearings*, 100-1, 5/7/87, at 172.

169. Owen Test., *Hearings*, 100-2, 5/14/87, at 325-26.

170. Owen Test., *Hearings*, 100-2, 5/14/87, at 325-26.

171. Owen Test., *Hearings*, 100-2, 5/14/87, at 327; see Owen Letter, 7/2/84, to North, RWO Ex. 1 at 777 ("firecracker costs").

172. Owen Test., *Hearings*, 100-2, 5/14/87, at 326-42.

173. Owen Test., *Hearings*, 100-2, 5/14/87, at 334-35; *id.*, 5/19/87, at 385.

174. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 5.

175. North Memo, 8/28/84, to McFarlane: Subj: "Official Travel to Honduras on August 31, 1984," at N46204.

176. North Memo, 9/2/84, to McFarlane: Subj: "FDN Air Attack of 1 September," RCM Ex. 30-B at 426, N44850.

177. Ken deGraffenreid was, at the time, the head of the NSC Staff's Intelligence Directorate, the group responsible for coordinating policy on covert action projects. deGraffenreid Dep., 6/19/87, at 5; *id.*, 7/27/87, at 58.

178. North Memo, 10/9/84, to McFarlane: Subj: "Draft National Security Decision Directive (NSDD) on Arms Interdiction in Central America," at N6446-51.

179. Cong. Rec. H11974 (Oct. 10, 1984). Representative Hyde, an opponent of the Boland Amendment, gave it a similar interpretation in urging members to reject it. He stated: "[S]ection 107 . . . forbids any assistance to the freedom fighters in Nicaragua . . . . Arm them and abandon them on a party line vote. No food, no medicine, no ammunition, not even moral support. We barely leave them a prayer." Cong. Rec. H8269 (Aug. 2, 1984). See Chapter 26 for a fuller discussion of the legislative history of the Boland Amendment.

180. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 162-63; see *id.*, at 270-71; McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 223-24; Poindexter Test., *Hearings*, 100-8, 7/20/87, at 52-53. See Chapter 26 for a fuller discussion of their views.

181. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 52–53.

182. See McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 203-04.

183. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 203; see also McFarlane Test., *Hearings*, 100-2, 5/12/87, at 129.

184. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 44-48; McFarlane Test., *Hearings*, 100-2, 5/11/87, at 20.

185. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 21.

186. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 21.

187. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 204, 221-22.

188. Poindexter Test., *Hearings*, 100-8, 7/21/87, at 340-41; North Test., *Hearings*, 100-7, Part I, 7/9/87, at 177.

189. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 177; *id.*, 7/9/87, at 186; *id.*, 100-7, Part II, 7/13/87, at 78-79.

190. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 228-29; *id.*, 7/15/87, at 74.

191. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 204; see also *id.*, 7/14/87, at 211-22.

192. Poindexter PROF to McFarlane, 11/23/84 a 21:27:14, JMP Ex. 4.

193. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 74.

194. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 74.

195. Poindexter Dep., 5/2/87, at 51-52.

196. Poindexter Dep., 5/2/87, at 63.

197. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 225.

198. North Test., *Hearings*, 100-7, Part II, 7/10/87, at 2-3.

199. Calero Test., *Hearings*, 100-3, 5/20/87, at 11-12.

200. See, e.g., North Notebook, 1/10/85, Q0957; *id.*, 1/3/85, Q0934; *id.*, 12/12/84, Q0893.

201. North Notebook, 12/7/84, Q0882; *id.*, 12/17/84, Q0910; see North Memo, 12/20/84, to McFarlane: Subj: "Follow-up with [ ] re: Terrorism and Central America," N7200-02.

202. North Notebook, 12/17/84, Q0910; *cf.* North Memo, 12/20/84, to McFarlane: Subj: "Follow-up with [ ] Re: Terrorism and Central America," N7200 (indicating $15K price per launcher).

203. North Memo, 12/20/84, to McFarlane: Subj: "Follow-up with [ ] re: Terrorism and Central America," N7200-02.

204. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 222.

205. North Notebook, 1/3/85, Q0934.

206. North Memo, 12/4/84, to McFarlane: Subj: "Assistance for the Nicaraguan Resistance," RCM Ex. 32 at 468, N16887.

207. North Memo, 12/4/84, to McFarlane: Subj: "Assistance for the Nicaraguan Resistance," RCM Ex. 32 at 468, N16887.

208. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 83-84.

209. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 29-30.

210. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 83-84.

211. Secord Test., *Hearings*, 100-1, 5/5/87, at 51-52. Bank records indicate that the downpayment for the first sealift was not made until February. H9409.

212. North Notebook, 1/29/85, Q1553-54.

213. North Notebook, 1/30/85, Q1555.

214. North Notebook, 2/5/85, Q1580 (emphasis in original).

215. See North Memo, 3/5/85, to McFarlane: Subj: "Aid to the Nicaraguan Resistance," RCM Ex. 35 at N7189-97 (attaching end user certificates dated Feb. 14, 1985).

216. See McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 221; North Notebook, 1/2/85, Q0932.

217. C/CATF Test., *Hearings*, 100-11, 8/4/87, at 237-38.

218. See Owen Test., *Hearings*, 100-2, 5/14/87, at 332-33.

219. North Test., *Hearings*, 100-7, Part I, 7/9/87, at 266-67.

220. See Poindexter Test., *Hearings*, 100-8, 7/15/87, at 193.

221. See North Memo, 11/7/84, to McFarlane: Subj: "Clarifying Who Said What to Whom," RCM Ex. 31 at 463, N6914.

222. *Id.*, RCM Ex. 31, at 463-64, N6914-15.

223. *Id.*, RCM Ex. 31, at 465, N6916.

224. *Id.*, RCM Ex. 31, at 464, N6915.

225. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 222; McFarlane Test., *Hearings*, 100-2, 5/11/87, at 166.

226. North Test., *Hearings*, 100-7, Part I, 7/9/87, at 204-05.

227. North Memo, 2/6/85, to McFarlane: Subj: "Nicaraguan Arms Shipments," RCM Ex. 33 at 472, N6918.

228. *Id.*, RCM Ex. 33, at 472, N6918.

229. *Id.*, RCM Ex. 33, at 472, N6918.

230. *Id.*, RCM Ex. 33, at 475, N6921.

231. North Memo, 12/4/84, to McFarlane: Subj: "Assistance for the Nicaraguan Resistance," RCM Ex. 32, at 470, N16889.

232. North Test., *Hearings*, 100-7, Part II, 7/14/87, at 157.

233. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 29-30.

234. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 230.

235. North Test., Exec. Session, 7/9/87, at 58.

236. North, PROF Note, 8/23/86 at 15:52:52, to Poindexter, N12151. [North Classified Ex. 336.]

237. Singlaub Test., 5/20/87, at 192; see North Test., 7/7/87, at 199-202.

238. Singlaub Test., 5/20/87, at 190-93; see also North Test., 7/7/87, at 199-202.

239. Singlaub Test., 5/20/87, at 192.

240. McFarlane Test., 5/11/87, at 14-15; *id.*, 5/14/87, at 203.

241. North Test., 7/7/87, at 198-99.

242. North Test., 7/7/87, at 202-04.

243. North Test., 7/7/87, at 234 ("[S]omeone had told me that a U.S. Government official should not, cannot, will not, whatever solicit.")

244. Singlaub Test., 5/20/87, at 193-94.

245. Singlaub Test., 5/20/87, at 201.

246. Singlaub Test., 5/21/87, at 164.

247. Singlaub Test., 5/20/87, at 198-99.

248. North Notebook, 2/1/85, Q1567; see Singlaub Test., 5/20/87, at 198-201.

249. North Memo, 2/6/85, to McFarlane, RCM Ex. 34 at 479, N7015. In a handwritten addition, North wrote: "Nor should Singlaub indicate any U.S. Government endorsement whatsoever." *Id.*

250. North Memo, 2/6/85, to McFarlane, RCM Ex. 34, at 479, N7015.

251. Singlaub Test., 5/20/87, at 200. Singlaub informed North that he presented three options for Country 3 to contribute to the Contras: (1) a deposit to a foreign bank account where no subsequent accounting would be provided; (2) a contribution directly to, and with an accounting by, Singlaub; and (3) a diversion from the proceeds of an upcoming arms sale to Country 3 (so that no disbursement would then be reflected on Country 3's books). Singlaub also proposed that Countries 3 and 5 make direct contributions to the Contras of military supplies. Singlaub Test., 5/20/87, at 195-97.

252. Singlaub Test., 5/21/87, at 204.

253. See North Test., 7/7/87, at 199-207.

254. McFarlane Test., 5/13/87, at 103-05.

255. Secord Test., 5/5/87, at 154-56.

256. Secord Test., 5/5/87, at 154-56.

257. McFarlane Test., 7/14/87, at 218.

258. McFarlane Test., 5/11/87, at 49-52.

259. McFarlane Test., 5/11/87, at 51-52.

260. McFarlane Test., 5/11/87, at 50-51; see Shultz Test., 7/23/87, at 8-9; McFariane Int., 4/5/87, MF1955.

261. Weinberger Test., 7/31/87, at 133, 135.

262. Vessey Dep., 4/17/87, at 6; Weinberger Test., 7/31/87, at 134; cf. CWW Ex. 39, CIA Memo for the Record by J. McMahon, "Breakfast with Secretary and Deputy Secretary of Defense," 3/15/85, ("In closing the Secretary stated that he had heard that [Country 2] had earmarked $25 million for the Contras in $5 million increments"). While Weinberger did not recall making the statement recorded in the memo, Weinberger Dep., 6/17/87, at 74-75, McMahon confirmed, in his deposition, the accuracy of the information. McMahon Dep., 7/1/87, at 57 (Q: "Do you remember that meeting where Secretary Weinberger mentioned that he had heard that [an official of Country 2] had earmarked $25 million for the contras?" A: "Yes." Q: "What did he say in that meeting?" A: "Exactly what you sa*id*. It was like an offhand remark.")

263. Shultz Test., 7/23/87, at 8-9.

264. McFarlane Test., 5/11/87, at 54.

265. See O4882-83.

266. Weekly Presidential Documents, Vol. 20, No. 45, 11/9/84, at 1817.

267. McFarlane Test., 5/11/87, at 43.

268. The Washington Post, 11/30/84, at A1 (statement of Sen. David Durenberger).

269. Weekly Presidential Documents, Vol. 20, No. 51, 12/21/84, at 1909.

270. See Weinberger Memo, 1/3/85, to McFarlane: Subj: "U.S. Policy Toward Nicaragua," at N6495.

271. See North Memo, 1/15/85, to McFarlane: Subj: "Nicaragua Options," Tab F, "Options and Legislative Strategy for Renewing Aid to the Nicaraguan Resistance," at N45086-93.

272. See North Memo, 1/15/85, to McFarlane: Subj: "Nicaragua Options," at N45025, N45029; see also McFarlane Test., 5/11/87, at 44.

273. North Memo, 1/15/85, to McFarlane: Subj: "Nicaragua Options," Tab I, "Policy Options for Nicaragua," at N45029.

274. North Memo, 1/15/85, to McFarlane: Subj: "Nicaragua Options," Tab E, "The Future of the Nicaraguan Resistance," at N45083.

275. North Memo, 1/28/85, to Poindexter: Subj: "Nicaraguan SNIE," (referring to "The Future of the Nicaraguan Resistance," Tab E to "Nicaragua Options" Memo, at N45029), at N32824.

276. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 21.

277. Secord Test., *Hearings*, 100-1, 5/5/87, at 49-52.

278. North Memo, 3/5/85, to McFarlane: Subj: "Aid to the Nicaraguan Resistance," RCM Ex. 35 at 494, N7184.

279. North Memo, 3/5/85, to McFarlane: Subj: "Aid to the Nicaraguan Resistance," RCM Ex. 35 at 494, N7184.

280. *Id.* RCM Ex. 35 at 495, N7185.

281. *Id.* RCM Ex. 35 at 494, N7184.

282. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 32-33; McFarlane Int., 4/5/87, MF1957.

283. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 147-48.

284. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 132, 135.

285. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 132

286. North Test., *Hearings*, 100-7, Part I, 7/8/87 at 132.

287. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 133. North made no mention in his testimony about what he believed to be the "extraordinary risk" involved. In contrast, in the case of his notebooks, which also contained the names and addresses of private donors and recipients, North felt free to remove them from the protection of his locked and guarded office. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 134. He destroyed the ledgers as the Contra diversion was coming to light in November 1986. North Test., *Hearings*, 100-7, Part I, 7/8/87, Part I, at 134.

288. Poindexter Test., *Hearings*. 100-8, 7/15/87, at 74.

289. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 74.

290. North Memo, 3/15/85, to McFarlane, N7127-28.

291. North Memo, 2/27/85, to McFarlane, N6418-19.

292. North Memo, 3/15/85, to McFarlane, at N7128.

293. North Memo, 2/27/85, to McFarlane, N6419.

294. North Memo, 3/15/85, to McFarlane, N7128.

295. Owen Test., *Hearings*, 100-2, 5/14/87, at 237-39.

296. Owen Test., *Hearings*, 100-2, 5/19 at 347-48.

297. Owen Test., *Hearings*, 100-2, 5/14/87, at 340-41.

298. Owen Test., *Hearings*, 100-2, 5/14/87, at 341-42.

299. Owen Test., *Hearings*, 100-2, 5/14/87, at 339-40.

300. "Steelhammer" Letter to "My Friend," RWO Ex. 3 at 782 (emphasis in original).

301. North Memo, 11/7/84, to McFarlane: Subj: "Clarifying Who Said What to Whom," RCM Ex. 31, at 464, N6915.

302. CIA Memo, 3/5/85, "Outside Support to the FDN," C2470.

303. See, e.g., Guardian, 3/13/85, at 3; see also Boston Globe, 12/30/84, at A21, A24.

304. Singlaub Test., *Hearings*, 100-3, 5/20/87, at 83-84.

305. Singlaub Test., *Hearings*, 100-3, 5/20/87, at 83-84.

306. As Owen wrote to North in February, "[a] major lobbying, educational and public relations effort is needed to help sway a Congress which appears inclined not to vote for passage of covert funding." Owen Memo, 2/19/85, to North: Subj: "Public Relations Campaign for the Freedom Fighters," RWO Ex. 4 at 783.

307. North/Fortier Memo, 3/22/85, to McFarlane: Subj: "Timing and the Nicaraguan Resistance Vote," Tab, "Chronological Event Checklist," N40320-331. The plan apparently evolved from meetings of an ad hoc working group chaired by Patrick Buchanan. See *id.* at N40317.

308. North Memo, 3/16/85, to McFarlane: Subj: "Fallback Plan for the Nicaraguan Resistance," RCM Ex. 36 at 511, N10618.

309. *Id.* RCM Ex. 36 at 512, N10619.

310. *Id.* RCM Ex. 36 at 512, N10619.

311. North/Fortier Memo, 3/22/85, to McFarlane: Subj: "Timing and the Nicaraguan Resistance Vote," at N40317.

312. See Fortier Memo, 4/1/85, to McFarlane: Subj: "Contra Vote —Delay to May," N18785-86.

313. North Memo, 4/1/85, to McFarlane: Subj: "Using the March 1 San Jose Declaration to Support the Vote on the Funding for the Nicaraguan Resistance," N40317 (emphasis added).

314. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 28.

315. Weekly Presidential Documents, Vol. 21, No. 18, at 537 (Apr. 24, 1985).

316. Weekly Presidential Documents, Vol. 21, No. 18, at 557 (Apr. 29, 1985).

317. Weekly Presidential Documents, Vol. 21, No. i8, at 566 68 (May 1, 1985).

318. North Memo, 4/11/85, to McFarlane: Subj: "FDN Military Operations," RCM Ex. 37 at 520, N10592.

319. Calero Test., 5/20/87, at 29; North Memo, 4/11/85, to McFarlane: Subj: "FDN Military Operations," RCM Ex. 37 at 520, N10592.

320. In all but one case, these arms had been purchased by Calero from General Secord. Calero Test., 5/20/87, at 30.

321. North Memo, 4/11/85, to McFarlane: Subj: "FDN Military Operations," RCM Ex. 37 at 520, N10592. As of March 25, 1985, Calero had received $32 million. O4881-83.

322. *Id.*, RCM Ex. 37 at 521, N10593.

323. Gorman Dep., 7/22/87, at 25-32.

324. RCM Ex. 37 at 521, N10593. North's notes suggest that these plans were at least to some extent pursued. On June 17, North first met with Secord and "Tom" (perhaps Clines); that same morning he met with the Chief of the Central American Task Force, and noted "-need more Intel; -MAPS - 1:80,000 Northern Area; -Maps of Managua Airport Area." The note continues: "-Log/Mil Plning - Miami -3 small Maule, 1 C-47, 1 Helo, Medevac -Log Support for 3 mines Area -Log Support for Managua Ops -Phaler Boat Ops -Refinery -Ammo Purchase Program -Training Program." North Notebook, 6/17/85, Q1953-54.

325. On May 6, North learned from the Chief, Central American Task Force, the details of a Sandinista attack. North Notebook, 5/6/85, Q1796. By the next day, the Contras had been ordered to move out, and Calero called North to tell him that he was "waiting for word on where they want[ed the] FDN to move to." North Notebook, 5/7/85, Q1800. North received the same news from the Chief, CATF: They had to "immed. vacate [location], will have to vacate." North Notebook, 5/8/85, Q1808. On May 13, North learned from the U.S. Ambassador that the "dispersal" was "complete." North Notebook, 5/13/85, Q1818. North told a Central American Ambassador that it was "essential that [the] movement not feel abandoned . . ." "There must be some visible link/continuity in [the] program." North Notebook, 5/9/85, Q1810.

326. North/Fortier/Lehman/Burghardt Memo, 5/15/85, to McFarlane: Subj: "Congressional Strategy for Nicaraguan Resistance Funding," N40244.

327. North Memo, 5/31/85, to McFarlane: Subj: "The Nicaraguan Resistance: Near Term Outlook," RCM Ex. 38 at 532, N10584.

328. Secord Test., *Hearings*, 100-1, 5/5/87, at 52-53.

329. North Notebook, 5/1/85, Q1790.

330. Secord, *Hearings*, 100-1, 5/5/87, at 53.

331. See, e.g., North Notebook, 5/17/85, Q1832: "Mario [Calero] more & more in picture;-ponchos, Howard, tires for C-47;-LORAN C w/ Bad cable, boots w/bad soles; -serious logistics problems; - possible Martin interference w/ [Central American] delivery; -ship arrives 1 June 85 - Danish vessel; -$148/copy for . . . in lots of 5K or more."

332. See RCM Ex. 37 at 525, "FDN Expenditures and Outlays."

333. North Notebook, 5/8/85, Q1806.

334. North Notebook, 5/24/85, Q1861.

335. Secord Test, *Hearings*, 100-1, 5/5/87, at 57.

336. North Notebook, 5/1/85, Q1790.

337. North Test., 7/8/87, at 83.

338. North Test., 7/8/87, at 84.

339. Singlaub Test., 5/20/87, at 202-03.

340. Singlaub Test., 5/20/87, at 204.

341. Singlaub Test., 5/20/87, at 206-08.

342. Singlaub Test., 5/20/87, at 210-11.

343. Singlaub Test., 5/20/87, at 218.

344. North Test., 7/8/87, at 83.

345. Secord Test., *Hearings*, 100-1, 5/5/87, at 53.

346. See Chapter 22.

347. Secord, *Hearings*, 100-1, 5/5/87, at 51.

348. But see Secord Test., 5/5/87, at 152 ("[L]ater in 1985, I foreswore my share of the profits that had accrued to that time, none of which I had drawn, and discussed this extensively with Mr. Hakim").

349. Secord Test., 5/5/87, at 142. For details of the financial workings of the Enterprise, see Chapter 22.

350. Calero Test., 5/20/87, at 32.

351. Calero Test., 5/20/87, at 279-80.

352. North Test., 7/10/87, at 155-56.

353. North Test., 7/8/87, at 62.

354. Singlaub Test., 5/20/87, at 211-13.

355. Singlaub Test., 5/20/87, at 213-14.

356. Calero Test., 5/20/87, at 90.

357. North called Clarridge immediately after he discussed the purchase with Secord, and asked Clarridge to do a check on the European arms dealer. North Notebook, 5/18/85, Q1834. Clarridge, who was by then Chief of the CIA's European division, reported back on May 23, 1985. *Id.*, 5/23/85, Q1858.

358. North Notebook, 5/17/85, Q1831.

359. North Notebook, 5/17/85, Q1833.

360. North Notebook, 5/20/85, Q1837.

361. North Test., 7/8/87, at 84.

362. Committee Interview, 6/10/87.

363. Singlaub Test., 5/20/87, at 222-25. The vessel was met by an associate of Ron Martin, Mario DelAmico, who held himself out as a representative of a Central American country, charged with FDN matters. In September, Singlaub met with DelAmico, who warned him that he should never send another ship but, instead, purchase weapons through Martin. *Id.* at 227. Singlaub told North of this "threat," and North responded that "he would take whatever action was necessary of this." *Id.*

364. North Notebook, 5/15/86, Q1825. In fact, Calero's funds were not completely depleted until October 1985. See bank records, O4737.

365. Calero Test., 5/20/87, at 152.

Chapter 3

The Enterprise Assumes Control of Contra Support

In the summer of 1985, Congress voted to appropriate $27 million for the Contras' humanitarian needs, including food, medicine and clothing. At the same time, the covert program, run by the National Security Council (NSC) staff, entered a new and bolder phase. With the Contras' daily living needs taken care of by Congress, and their requirements for arms having been met through Country 2's prior donations, the NSC staff was able to focus on attempting to improve the Contras' military effectiveness. This involved establishing an air resupply program for the main Contra fighting force operating in the North of Nicaragua, the Nicaraguan Democratic Force (FDN), and promoting the opening of a second Contra front in the South of Nicaragua by supporting other Contra fighters, independent of the FDN, who were operating there. This support for the southern forces included the procurement of arms as well as the establishment of an air resupply program.

Disappointed at the failure of Adolfo Calero to develop a logistics infrastructure, Lt. Col. Oliver North asked Gen. Richard Secord and his associates to assume new responsibilities that under the Boland Amendment the U.S. Government could not undertake. Secord agreed to continue to handle all future weapons procurement for the Contras and to acquire and operate a small fleet of planes to make air drops of weapons, ammunition, and other supplies to the Contras in both northern and southern Nicaragua. North arranged the funding for Secord to carry out these activities, directing third-country and private contributions to Secord that previously went to Calero. These funds were later augmented by the diversion from the Iranian arms sales that North, with Admiral John Poindexter's approval, initiated.

Financed by contributions and the diversion, the Secord group purchased and operated five airplanes, built an emergency airstrip in Costa Rica, maintained an air maintenance facility and a warehouse in another Central American country, and hired pilots and crew to fly the air drop missions. They also purchased weapons and ammunition in Europe and delivered them to Central America for use by the Contras in the south and north. North called the organization "Project Democracy." Secord and his partner, Albert Hakim, referred to it as the Enterprise.

The Enterprise, though nominally private, functioned as a secret arm of the NSC staff in conducting the covert program in Nicaragua. While Secord controlled the operational decisions of the Enterprise, North remained in overall charge of the Contra support program. He set the priorities and enlisted the support of an Ambassador, Central Intelligence Agency (CIA) officials, and military personnel to carry out the air resupply operation. He dealt with crises as they arose, sometimes on a daily basis. In carrying on these tasks, North had the unqualified support of Admiral Poindexter, who had replaced Robert McFarlane as National Security Adviser in December 1985.

The efforts of the NSC staff and the Enterprise to carry out a government function with a makeshift covert organization were, however, dogged by problems from the beginning. The Enterprise's aircraft were in poor condition and the group had to overcome numerous tactical problems in carrying out its mission. While the Enterprise conducted routine air drops in northern Nicaragua, it was not able to begin a regular air drop operation in the south until late summer of 1986—at a time when both Houses of Congress had voted to authorize the CIA to resume its support for the Contras with appropriated funds and when the Enterprise was trying to sell its assets to the CIA. The operation ended abruptly in October 1986 when the plane that Eugene Hasenfus was on was shot down while on a mission to drop supplies to the Contras in Nicaragua.

Before that and for more than 2 years, the NSC staff had secretly achieved what Congress had openly disapproved in the Boland Amendment—an extensive program of military support for the Contras. The Boland Amendment operated as a restraint on disclosure, not on action, as the NSC staff placed policy ends above the law.

The Enterprise's Mission is Expanded

On June 12, 1985, the House passed a bill approving $27 million in humanitarian assistance to the Contras, paving the way for final approval and signature by the President in August 1985. While that vote virtually ensured that the Contras would have adequate food, medical supplies, and other provisions, it also strictly limited the money to nonmilitary uses.

The provision of covert military assistance remained the secret business of the NSC staff. In the summer of 1985, articles appeared in the press speculating about the role of the NSC staff in assisting the Contras and Congress began inquiring of the National Security Adviser whether this was true. Yet, at this very time, the NSC staff decided to extend its covert program to include a system for resupplying Contras in the field. Some of the Contras fighting within Nicaragua were as many as 30 days away by land from border areas. To keep them supplied and to encourage other fighters to move from border sanctuaries to Nicaragua, a capacity to make aerial drops of ammunition and other supplies was essential.[1]

As early as February 1985, North had urged Calero to set aside $10 million from the funds raised from Country 2 to hire a logistics expert and create a resupply operation. But the available money was used to purchase and stockpile weapons. As a result, by summer 1986, the Contras had a surplus of arms. Their problem was how to deliver these weapons to the fighters. For North, the answer lay with Secord and his group.[2]

In early July, North held a meeting in Miami of Contra leaders and members of Secord's group to arrange for what Congress had refused to fund—the air resupply of lethal material for the Contra forces inside Nicaragua. Present were North, FDN leader Adolfo Calero, Enrique Bermudez, the FDN military commander, Secord, and his associates, Thomas Clines and Rafael Quintero.[3]

North began the meeting with an expression of a loss of confidence in the way the FDN was handling the donated funds he had directed to the FDN. Secord described North's remarks:

> The meeting commenced on a pretty hard note, with Colonel North being worried about and critical of the Contras, because he had been receiving reports that the limited funds they had might be getting wasted, squandered or even worse, some people might be lining their pockets.
>
> His concern, as he articulated it, was a very serious one. He was afraid that if anything like this was going on that since they were dependent on contributions that the image of the Resistance could be badly damaged; it could ruin us, in fact, and he was very, very hard on this point.[4]

North's solution, though not unveiled at the meeting, was to have Secord and his group take over the procurement function for the Contras. As Robert Owen, North's courier, testified, "I think he and General Secord felt they probably could do a better job" of handling the funds than the Contras.[5]

North had decided to furnish the FDN directly with arms, air support, and other supplies. He would no longer leave to the Contras the task of spending their own money on these goods and services. Almost immediately after the Miami meeting, Secord's partner, Albert Hakim, established the Lake Resources account in Geneva, Switzerland, and thereafter virtually all donated funds were directed by North to the Lake Resources account in Switzerland, not Calero's accounts. The Secord group—the Enterprise—would no longer function simply as an arms broker from which Calero would purchase the arms. With the contributions, it would make all the decisions on arms purchases and supply the Contras with the weapons and the other support they needed, without receiving from the Contras payment for the arms.[6]

The Contras' management of money was only one of the problems raised at the all-night meeting in Miami. More important was the need to create an airlift system to drop supplies to FDN troops inside Nicaragua and to open a Southern front.

The first priority, all agreed, was the delivery of the arms already purchased to the soldiers fighting near and inside Nicaragua. Before the Boland Amendment was passed, the CIA helped to arrange the airlift of arms and other supplies to the troops. When the CIA withdrew, the Contras had difficulty maintaining this important logistical function. The FDN's aircraft were few and could not effectively and consistently penetrate Nicaraguan airspace past Sandinista defenses. Moreover, the FDN lacked properly trained personnel. The continuing resupply of troops and its attendant logistics, maintenance, and communications comprised the "sinews of war," the infrastructure necessary for any sustained and effective fighting force. North turned to Secord to establish and run the air resupply operation.[7]

The participants in the Miami meeting also agreed on the need to open a Southern front. With the FDN, the principal Contra force, operating in the North, the Sandinistas could concentrate their military forces on the Northern front. Forcing the Nicaraguans to fight a two-front war by building up a Contra force in the South was elemental military strategy. Calero, however, continued to concentrate his resources on his own organization in the North, the FDN.[8]

The air resupply and Southern front projects went hand-in-hand. Because neighboring countries were reluctant to permit land resupply from inside their borders, a southern force could not live without air resupply. And the FDN could not, or would not, undertake this mission on its own.[9]

Thus, the air resupply operation that North asked Secord to undertake was also the key to the Southern front. In giving this assignment to Secord, North testified that he acted with McFarlane's authority.[10] McFarlane denied this.[11] Poindexter, however, stated that he was "aware that Colonel North was concerned about the logistics operation, the way it was going, and I was aware that he was going to talk to General Secord about setting up a more professional logistics support operation as a private operation."[12]

The New Humanitarian Aid

As the Enterprise began implementing the plans laid in Miami, the Contras received a boost from Washington. On August 8, 1985, President Reagan signed legislation authorizing $27 million in humanitarian aid to the Contras.[13] For the first time since May 1984, the Contras would receive U.S. Government funding as well as intelligence support from the CIA. Although the Boland Amendment remained in effect, new legislation specified that the Amendment did not prohibit exchanging information with the Contras.[14]

The legislation prohibited the CIA or the Department of Defense (DOD) from administering the new humanitarian funds and required that the President ensure that any assistance "is used only for the intended purpose and is not diverted" for the acquisition of military hardware. The State Department was chosen to administer the aid. By executive order signed on August 29, 1985, the President created the Nicaraguan Humanitarian Assistance Office (NHAO) in the State Department.[15]

The State Department was reluctant to accept this responsibility. The Department had no experience and lacked the organization to feed and provide for the daily needs of troops. To run NHAO, Secretary George P. Shultz tapped Ambassador Robert Duemling, a seasoned diplomat, but with no prior experience in administering an aid program. Secretary Shultz cautioned Duemling to administer the aid not only with "enthusiasm" but also with "care." Ambassador Duemling found the program difficult to administer from the start.[16] Nicaragua's neighbors did not officially recognize the Contra movement, even though Contras operated unofficially out of their territory. The cargo of the initial NHAO flight on July 10 was impounded when local Central American authorities learned that an NBC film crew was on board at the invitation of Calero's brother. Thereafter, that Central American country barred, for a period of time, the entry of NHAO employees, which prevented them from conducting any on-site accounting of supplies or of the Contras' needs.[17] Deumling's difficulties were definitional as well as operational. NHAO had continually to assess whether various items were "humanitarian" within the meaning of the statute.[18]

Preparations for the Resupply Operation

In the beginning of August, Secord met with North and others to discuss the steps necessary to establish the resupply program. First, a logistics organization consisting of aircraft, spare parts, maintenance, communications, and trained personnel had to be set up. For that, Secord turned to former Air Force Lt. Col. Richard Gadd, who since his retirement from the military in 1982 had been providing, through a private business, air support to the Pentagon.[19]

The second task was to obtain a secure operating base from which the aircraft could launch their missions. For this, Quintero, on Secord's instructions, consulted with the Contra leaders and chose a military airbase in a Central American country ("The Airbase".) Secord and North concurred in this choice.[20]

Finally, Secord concluded that to establish a sustained air resupply operation on the Southern front, an emergency airstrip was necessary in the South. North suggested to Secord Santa Elena in the northwest corner of Costa Rica, which North believed could also be used as a covert secondary operating base for resupply to the Southern front.[21]

U.S. Support for the Covert Operation

The plans made in Miami for a resupply operation and a Southern front could not have been implemented without the active support of U.S. Government officials.

In July 1985, almost immediately after the Miami meeting, North asked Lewis Tambs, the newly appointed Ambassador to Costa Rica, to help open a Southern front for the Contras, a request that Poindexter approved.[22] Tambs agreed without consulting Secretary Shultz. Later that summer, North specifically asked for Tambs' help, as well as that of CIA Chief Tomas Castillo, to facilitate the construction and use of the airfield.[23]

North testified that he had received authorization from Director of Central Intelligence William J. Casey to bring Castillo into the resupply operation. Moreover, according to North, the airstrip was discussed in the Restricted Interagency Group on Central American Affairs, which consisted of, among others, North, the Chief of the Central American Task Force (CATF) at the CIA and the group's chairman, Elliott Abrams, Assistant Secretary of State for Inter-American Affairs.[24] Abrams acknowledged the discussions, but testified that he believed "private benefactors, as we used to call them, were building the airstrip."[25]

The Airfield Is Planned

On August 10, 1985, North flew to Costa Rica where he met with Castillo and Tambs. North and Castillo discussed the establishment of a secret airbase that would permit moving all Contra military operations inside Nicaragua for resupply by air. Castillo and Tambs then worked to achieve the establishment of the airfield and air resupply depot for the Contra forces. Castillo reported these developments to the Chief of the CATF at CIA headquarters. The Chief replied that he was pleased with these developments but he "emphasize[d]" to Castillo that neither the CIA nor DOD could "become involved directly or indirectly" in the project.[26]

Less than a week later, North sent Robert Owen to Costa Rica to scout the Santa Elena site. Owen met with Tambs, who introduced him to Castillo as a North emissary. The next day, Owen and Castillo surveyed Santa Elena. Owen took photographs and returned to Washington with a map, photos, and a description of various logistical problems presented by the air strip. North later told Castillo that he thought Santa Elena was an ideal place for a refueling and resupply base.[27]

Meanwhile, North recruited a former Marine colleague, William Haskell, to negotiate the purchase of the land at Santa Elena for the airfield. By the beginning of September, Haskell, under the alias of Olmstead, arrived in Costa Rica to meet with Joseph Hamilton, an American who headed the group that owned the land at Santa Elena. While Tambs assisted in bringing the parties together, Castillo alerted North that local groups had to be involved in the construction. Eventually, Secord paid more than $190,000 for local contractors and guards at the airstrip.[28] On October 3, Haskell called North with news of Hamilton's tentative approval for the sale of the land. Shortly thereafter, North, Haskell, Secord, Gadd, and Hakim met. At North's request, Gadd agreed to assemble a team and assume responsibility for constructing the airstrip.[29]

The Airbase Is Secured

Once the Airbase in the other Central American country was selected as the most desirable main base for the air resupply operation, North also took the necessary steps to obtain host-government approval, which required the assistance of other U.S. Government officials. North's notebooks reflect that on September 10, 1985, he met with Col. James Steele, a U.S. Military Group Commander stationed in Central America, and Donald Gregg, Vice President Bush's National Security Adviser. Among the discussion topics North listed was a "Calero/Bermudez visit to [the Airbase] to estab[lish] log[istical] support/maint[enance]," as well as other possible locations for the resupply base.[30] Gregg, however, testified that he did not know of the resupply operation prior to the summer of 1986.[31]

On September 16, North's notebooks reflect a call from Steele, "what about Felix—help for a/c [aircraft] maint[enance]." [32] An ex-CIA operative, Felix Rodriguez had volunteered as a private American citizen to aid a Central American Air Force in counterinsurgency maneuvers. Rodriguez had a close relationship with a local Commander stationed at the Airbase ("The Commander"). In a letter dated September 20, North asked Rodriguez to obtain service space at the Airbase for one C-7 Caribou aircraft and for occasional Maule maintenance. The Maule would be operated by the FDN and the Caribou by a private contractor for aerial resupply of both the FDN in the North and eventually in support of a Southern front, North wrote. North also said Rodriguez could use North's name with the Commander. Rodriguez agreed to help and obtained the Commander's approval.[33] Poindexter had sanctioned North's efforts to obtain the Central American country's help in the logistics of air resupply.[34]

Securing suitable aircraft that the Enterprise could afford proved difficult. In the summer of 1985, North met with both Secord and Calero on the most immediate aircraft needs of the FDN and the resupply operation. They decided that their first need was a C-7 Caribou, a twin-engine propeller aircraft capable of carrying a 5,000-pound cargo over a 900-mile range.[35] By November 1985, Gadd, whose task it was to locate and purchase the airplanes, had found three surplus C-123 airplanes belonging to a Latin American Air Force. Gadd had earlier formed Amalgamated Commercial Enterprises (ACE), a shelf company registered in Panama, to hold title to the aircraft. ACE was owned equally by Gadd and Southern Air Transport of Miami, which was to provide maintenance and other logistical support.[36]

The logistics director of the Latin American Air Force was unwilling to sell the airplanes—whose use was for military transport—to Gadd without a sign of official U.S. Government approval. So, Gadd turned to North for assistance, who decided to intercede in an effort to obtain the airplanes. North told Gadd and Secord that he requested both Robert McFarlane and the State Department's assistance. On November 15, North indicated in his notebook that he called "Elliott" "re call to [the Latin American country]" for the purpose of telling [that country] that "ACE is OK." Abrams, however, denied any knowledge of the planes belonging to the Latin American country's Air Force. In addition, North asked Vince Cannistraro, a colleague at the NSC, to intercede with the Latin American country. In the PROF note on November 20, North referred to Cannistraro's upcoming call and provided the following talking points:

> A reputable business organization called A.C.E. Inc. is negotiating with your air force to buy three excess C-123 aircraft, a number of engines (48) and some spare parts.
>
> A.C.E. is a legitimate company which will use the aircraft for a good purpose that is in the interest of your country and ours—humanitarian aid deliveries to anti-communist resistance forces (. . . Nicaragua).

> Apparently the logistics director for the air force . . . was concerned that A.C.E. (Amalgamated Commercial Enterprises) may not be legitimate or that the A/C could be used for drug running or the like. This is not the case.
>
> It would be very helpful if you could contact someone who can clarify the good reputation of A.C.E. and encourage [the logistics director] to consummate the offer which has been made by A.C.E. The need is great for these planes. They will help the cause of democracy where it is most needed.

Nonetheless, the Government of the Latin American country did not approve, and the Enterprise had to look elsewhere.[37]

From the inception of the air resupply operation in July 1985, North impressed upon Secord the fact that they were operating with donated funds that were strictly limited. Consequently, more preferable airplanes that were examined by Gadd and discussed by North and Secord, such as the Casa 212 and the L-100 turbo jet propeller-driven aircraft, were rejected because of their high cost, in favor of the less expensive C-7 and C-123.[38]

Country 3 Comes Through

More third-country money was needed to support the Contras. McFarlane had barred a return to Country 2,[39] and John K. Singlaub had since the end of 1984 been trying unsuccessfully to obtain money from Country 3.

In the summer of 1985, North turned to Gaston Sigur, a Senior Director for Far Eastern and Asian Affairs on the NSC staff, to seek his assistance with Country 3.[40] According to Sigur, North told him that it was an "emergency situation," and that he and McFarlane were aware that Country 3 "might have an interest in giving some assistance, financial assistance in the humanitarian area to the Contras."[41] North, too, testified that he had gone to Sigur with the knowledge, and approval, of McFarlane.[42] McFarlane testified to the contrary, claiming that he was "firm" with North "in saying to him absolutely no participation by you or any other staff member in any kind of approach to this country."[43]

Sigur recalled that when North asked him to set up the meeting, he inquired, "[N]ow everything here is quite legal?" to which North replied, "[O]h yes, we have checked all that out and there is no question about that."[44]

Sigur met with a Country 3 official and, without mentioning any specific amount of money, learned that the representative needed "to go back to his home government on it." The same day, Sigur went to McFarlane and told him that any contribution from Country 3 would have to be made directly through U.S. Government channels. According to Sigur, "Mr. McFarlane's response to that was that this is not possible, that cannot be done, and so I saw that as the end of that, and I told Colonel North about it."[45]

North was not deterred. He asked Sigur to arrange a face-to-face meeting with the Country 3 representative.[46] At the ensuing meeting at the Hay-Adams Hotel in the fall of 1985, North told the Country 3 representative that "this country [U.S.] would be very grateful if they were to make the contribution."[47] North's plea was successful. Sometime later, the Country 3 official responded with a $1 million contribution in "humanitarian" assistance.[48] North then sent Owen to give the official an envelope containing the Swiss bank number of the Enterprise's Lake Resources account. The $1 million was transferred to Lake Resources and another $1 million followed in the early months of 1986.[49]

The Link With NHAO

Without the knowledge of its supervisors, the Nicaraguan Humanitarian Assistance Office (NHAO) program was used to further the Enterprise's activities. Robert Owen became the first link between NHAO and the covert operation. In mid-September 1985, Owen applied to Ambassador Duemling for a position in the humanitarian aid office. North recommended Owen as a "can do" person "who knows the scene," but Duemling declined to hire him.[50]

Duemling still refused to hire Owen even after the three directors of the United Nicaraguan Opposition (UNO)—Calero, Arturo Cruz, and Alfonso Robelo—wrote Duemling requesting Owen's help. North, however, continued to press for Owen's employment. At a Restricted Interagency Group meeting on October 11, North complained about the October 10 NHAO resupply flight impounded by Central American authorities, claiming that it would never have happened if Owen had been working for NHAO. Only then did Duemling relent and agree to fund a UNO contract with Owen's company, the Institute for Democracy, Education and Assistance, Inc. (IDEA), to assist in disbursing the humanitarian aid.[51]

North exploited Owen's new position by using his trips, funded by humanitarian aid dollars, to transfer and receive information about the Contra war and the fledgling resupply operation. Following his trips to Central America, Owen would submit two reports—one to NHAO describing humanitarian services performed and another to North describing his activities in coordinating lethal aid. The grant agreement with the State Department barred Owen from performing "any service" related to lethal supply "during the term of this grant."[52]

North also told Owen that he should introduce Gadd to Mario Calero, who was in charge of purchases for the FDN in the United States, so that Gadd might get a contract to fly humanitarian aid supply missions.[53] Later, North personally accompanied Gadd to meet with Ambassador Duemling and urged Duemling to award Gadd an air delivery contract, to which Duemling, unaware of Gadd's role in the lethal resupply operation, agreed.[54]

New Legislation—Congressional Support Increases

On November 21, 1985, the Senate agreed to a conference report on the Intelligence Authorization Bill providing two significant Contra support measures: the CIA was granted additional money to provide communications equipment to the Contras and the bill specifically provided that the State Department was not precluded from soliciting third countries for humanitarian assistance. The U.S. Government was still barred from expending funds to provide lethal assistance to the Contras but, according to North, "the instructions were to bite off a little at a time and start moving back toward full support." [55]

Poindexter Visits Central America

On December 12, 1985, the newly appointed National Security Adviser, Admiral Poindexter, took a trip with North to Central America.[56]

In a PROF note to Poindexter, North recommended the trip, suggesting that it be "billed as a quick tour through the region to confer w/ top ranking U.S. officials to reinforce the continuity of U.S. policy in the region." That explanation would be a "plausible cover" for the real purpose of the trip, which included delivering to Central American officials "the messages we need sent." [57]

One of the messages was that "we [the United States] intend to pursue a victory and that [a Central American country] will not be forced to seek a political accommodation with the Sandinistas." [58] North noted that this Central American country was attempting to use support of the Contras as leverage to force U.S. aid.[59]

The Santa Elena airstrip in Costa Rica was also an issue raised in discussions during the trip. North brought Poindexter up to date on the progress of the Santa Elena airstrip, and they discussed what measures "could be taken to encourage" Costa Rica to be more cooperative with the Contras. When Poindexter returned from his one-day trip to Central America, he briefed the President on the morning of December 13, including informing the President of the efforts to secure the land necessary for the airstrip. Poindexter testified, and his notes reflect, that Poindexter "did talk to him [the President] about the private airstrip." [60]

Continued Funding Problems

By the end of 1985, North had put into motion the airlift operation and the beginnings of the Southern front. A critical problem remained how to fund these efforts. Throughout 1985, North, Casey, and Singlaub discussed a variety of methods to fund support for the Contras. In early 1985, in connection with his solicitation of Country 3, Singlaub suggested to Country 3 officials and to North that a portion of his proposed arms sales to Country 3 be diverted and applied to the benefit of the Contras. During the summer of 1985, Singlaub worked without success through Geomilitech Consultants, owned by Barbara Studley, on diverting part of a $75 million proposed sale of torpedos to Country 3. In the fall of 1985, Singlaub arranged for both North and Casey to meet with Studley to present yet another plan to aid the Contras and democratic resistance forces worldwide. Geomilitech would be a vehicle for a three-way trade to "enable the U.S. Government, the Administration, to acquire some Soviet-bloc weapons without having to go through the painful process of appropriations," in order to furnish weapons to anti-Communist insurgencies in Nicaragua and around the world. The proposed trade entailed the U.S.'s giving credit for high technology purchases to another country, that country using the credit to deliver military equipment to a totalitarian country, which would then transfer Soviet-compatible weapons to a trading company. According to the plan, the company, at the direction of the NSC and CIA, would distribute the weapons to the Contras and other resistance movements, "mandating neither the consent or awareness of the Department of State or Congress." These fundraising ideas were never approved. The diversion from the Iranian arms sales would provide the needed funds.[61]

Legislative Plans and a New Finding

At a January 10, 1986, NSC meeting, the first in 15 months on Nicaragua, the President heard the views of his advisers. CIA Director Casey described a buildup of Soviet weaponry and increasing Sandinista repression in Nicaragua; Admiral William J. Crowe, Jr., discussed the inability of the Department of Defense to provide logistical assistance that the Contras badly needed; and Secretary Shultz voiced his approval for resumption of Congressional funding for a covert program. The President ended the meeting by instructing his advisers to prepare to go back to Congress with a request for full funding ($100 million) of a covert action program.[62]

A week after the meeting, the President signed a new Finding on Nicaragua, consolidating what had been separate Findings governing various aspects of the program. The Finding authorized the CIA to implement the newly granted aid and to establish the communications network for which Congress had just provided funding.

The Resupply Operation Begins

In January 1986, the plans set in motion by North in the fall of 1985 were beginning to give shape to the resupply operation. Gadd recruited flight crews, agreed with Southern Air Transport that it would handle all aircraft maintenance, and purchased the first aircraft, a C-7 Caribou. A team was also sent to Santa Elena and construction of the airstrip began in earnest.[63] Moreover, the problem of secure communications was solved with the help of the National Security Agency.

According to North, both Casey and Poindexter had told him to seek some type of secure communications support. North turned to the National Security Agency for secure communications equipment.[64]

The National Security Agency provided KL-43 encryption devices to North. On January 15, North gave KL-43s to the principal members of the covert operation: Secord, Gadd, Steele, Castillo, Quintero, and William Langton, president of Southern Air Transport. North also put a device in his office at the Old Executive Office Building. Each month newly keyed material was distributed to the group to enable them to communicate with each other in a secure manner.[65]

Throughout January 1986, North also pursued discussions with Steele and CIA representatives about arrangements for using the Airbase and for establishing the airstrip at Santa Elena. North's notebooks indicate a series of telephone conversations with Steele relating to obtaining the permission of Central American officials for the resupply aircraft to operate from the Airbase.[66]

During that same period, North wrote to Poindexter that General John Galvin, Commander of U.S. Southern Command, was "cognizant of the activities under way in both Costa Rica and at [the Airbase] in support of the DRF [Democratic Resistance Force]." North added, "Gen. Galvin is enthusiastic about both endeavors." According to North's notebooks, North, Poindexter, and others met with Galvin on January 16 to discuss, among other items, "covert strategy/training/planning/support" for the Nicaraguan Resistance. General Galvin testified that he knew of the air resupply operation, but believed that it was being financed and run by private individuals, not the NSC staff.[67]

Meanwhile, North continued his discussions on the details of construction of the airstrip at Santa Elena. His discussions covered arrangements for fuel storage on site, the construction of guard quarters and even instructions to the bulldozer operation.[68]

In February, after consultation with Enrique Bermudez and various commanders connected with the Southern front, North and Secord decided to deliver approximately 90,000 pounds of small arms and ammunition geared for airdrop to the FDN, which also could be delivered to the Southern front. This was the first delivery of arms that North and Secord provided to the Contras without payment from them and out of funds that had been contributed directly to the Enterprise.[69]

Yet by February, supply problems still plagued the operation. There was only one plane at the Airbase, and it was damaged. On its arrival flight, the C-7 plane had developed mechanical problems. The crew jettisoned spare parts, and even training manuals, but the plane crash-landed nonetheless.[70]

Faced with the Contras' requests for resupply and lacking aircraft to perform the job, North sought to deliver arms to the Contra soldiers using aircraft that had been chartered by NHAO to take humanitarian supplies from the United States to Central America.[71]

In February 1986, North called Gadd at home and told him to charter an NHAO flight from New Orleans to the Airbase in Central America. Once the plane arrived at the Airbase, it was directed to an FDN base where ammunition and lethal supplies were loaded and airdropped to the FDN. NHAO later refused to pay for the portion of the charter that covered the delivery of lethal supplies.[72]

In the South, however, the Contra forces remained without necessary supplies. In part, the problem was logistical: the Costa Rican airfield was not yet open and the only planes available at the Airbase could not make the flight to southern Nicaragua. The problem was also political: the FDN did not want to share its scarce resources with the southern forces. In early February, Owen warned North that "our credibility will once again be zero in the south" if deliveries did not soon start:

> [T]hey have been promised they will get what they need. Who is to be the contact for these goods and who is to see that they are delivered? A critical stage is being entered in the Southern Front and we have to deliver.[73]

In early March, North asked Owen to travel with another NHAO humanitarian aid flight that, upon unloading, would be reloaded at the Enterprise's expense with lethal supplies for airdrop to the Southern front. However, the FDN never produced the munitions promised, even though CIA officials tried to persuade the FDN to release the munitions. The mission thus resulted in failure. As Owen later wrote North, "the main thing to be learned from this latest exercise is . . . the FDN cannot be relied upon to provide material in a timely manner."[74]

The President Meets a Costa Rican Official

In March 1986, a meeting North arranged for a Costa Rican Official with President Reagan at the White House occurred. The meeting was simply a photo opportunity, attended as well by North and Castillo.[75]

After the Oval Office visit, North asked the Official to meet with Secord that afternoon to work out some issues concerning the airstrip. At the meeting, the Official asked Secord for a letter, which the Official dictated, to the effect that the Costa Rican Civil Guard maintain control of the airstrip, have access to it for training purposes, and that ecological and environmental considerations apply.[76]

Lethal Deliveries Begin

By the end of March 1986, the C-7 Caribou aircraft was operating and flights finally began to ferry lethal and nonlethal supplies for the FDN in the North. But the problem of resupplying the Southern front remained.[77]

On March 28, Owen wrote to North that he, Steele, Rodriguez, and Quintero reached a consensus on what steps had to be taken to successfully resupply the South: lethal and nonlethal supplies should be stockpiled at the Airbase; the Caribou or better yet a C-123 should load at the Airbase, deliver to the South, and refuel at Santa Elena on the return to the Airbase; and the Southern Air Transport L-100 should be used until Santa Elena was prepared to refuel the C-7 and C-123.[78]

While Gadd completed the purchase of a second C-7 Caribou and the first C-123 in early April, North responded to the growing needs of the southern forces. Between early April and April 11, North coordinated virtually every aspect of the first drop of lethal supplies into Nicaragua by way of the Southern front. He was in regular communication with Secord and others to ensure that the drop was successful. KL-43 messages among the planners involved in this drop show both the level of detail in which North was concerned and the coordination among various U.S. Government agencies to ensure that the drop succeeded. The first message, from North to Secord, established the essential elements of the drop:

> The unit to which we wanted to drop in the southern quadrant of Nicaragua is in desperate need of ordnance resupply. . . . Have therefore developed an alternative plan which [Chief of the CIA's CATF] has been briefed on and in which he concurs. The L-100 which flies from MSY to [an FDN base] on Wednesday should terminate it's NHAO mission on arrival at [the FDN base]. At that point it should load the supplies at [the Airbase] which—theoretically [the CIA's Chief of Station in the Central American country] is assembling today at [the FDN base]—and take them to [the Airbase]. These items should then be transloaded to the C-123. . . . On any night between Wednesday, Apr 9, and Friday, Apr 11 these supplies should be dropped by the C-123 in the vicinity of [drop zone inside Nicaragua]. The A/C shd penetrate Nicaragua across the Atlantic Coast. . . . If we are ever going to take the pressure off the northern front we have got to get this drop in—quickly. Please make sure that this is retransmitted via this channel to [Castillo], Ralph, Sat and Steele. Owen already briefed and prepared to go w/ the L-100 out of MSY if this will help. Please advise soonest.[79]

Secord and Gadd arranged to lease the L-100 plane from Southern Air Transport. Secord transmitted the following instructions to Quintero on April 8:

> CIA and Goode [North's code name] report Blackys [a Southern front military commandante] troops in south in desperate fix. Therefore, [CIA's Chief of Station in a Central American country] is supposed to arrange for a load to come from [the FDN base] to [the Airbase] via L100 tomorrow afternoon. . . . Notify Steele we intend to drop tomorrow nite or more like Thurs nite. . . . Meanwhile, contact [Castillo] via this machine and get latest on DZ [drop zone] coordinates and the other data I gave you the format for. . . . CIA wants the aircraft to enter the DZ area from the Atlantic. . . .[80]

On April 9, Secord relayed to North that "all coordination now complete at [the Airbase] for drop—[Castillo] has provided the necessary inputs."[81] After the Southern military commanders relayed the drop zone information to Castillo's communications center, Castillo sent a cable to the Chief of the CATF at CIA headquarters, requesting flight path information, vectors based on the coordinates of the drop zone, and hostile risk evaluation to be passed to the crew. CIA headquarters provided the information, as it did on three other occasions that spring.[82]

After Secord's April 9 message, the L-100 arrived and was loaded with a considerable store of munitions for airdrop to the South on April 10. Castillo had provided the location of the drop zone to Quintero, and Steele told the Southern Air Transport crew how to avoid Sandinista radar. Despite North's intricate planning, the L-100 was unable to locate the Contra forces. The maiden flight to the Southern front had failed.[83]

On April 11, the L-100 tried again, airdropping more than 20,000 pounds of lethal supplies inside Nicaragua. This was the first successful drop to the southern forces. Before the plane left, Steele checked the loading of the cargo, including whether the assault rifles were properly padded. Castillo reported the drop to North in glowing terms:

> Per UNO South Force, drop successfully completed in 15 minutes. . . . Our plans during next 2-3 weeks include air drop at sea for UNO/KISAN indigenous force . . . maritime deliveries NHAO

> supplies to same. NHAO air drop to UNO South, but with certified air worthy air craft, lethal drop to UNO South. . . . My objective is creation of 2,500 man force which can strike northwest and link-up with quiche to form solid southern force. Likewise, envisage formidable opposition on Atlantic Coast resupplied at or by sea. Realize this may be overly ambitious planning but with your help, believe we can pull it off.[84]

The Resupply Operation Steps Up Its Activities

While the April 11 mission to the South was the only successful airdrop in that region, the air resupply operation was, by April, operating regular, almost daily, supply missions for the FDN in the North. Most missions delivered supplies from the main FDN base to the FDN's forward-operating positions. Other flights dropped lethal cargo to units operating inside Nicaragua. Many of these flights were helped informally by CIA field officers on the ground, who prepared flight plans for aerial resupply missions, briefed the air crews on Nicaraguan antiaircraft installations, and provided minor shop supplies to the mechanics. On one occasion, the CIA operations officer at an FDN base flew Ian Crawford, a loadmaster for the resupply operation, in a CIA helicopter with lethal supplies on board over the border area so Crawford could see where he and his crew were airdropping cargo three to four times daily. However, the resupply operation was not without problems. Poor maintenance hampered the performance of the aircraft and a lack of a closely knit organization contributed to the Enterprise's troubles.[85]

Because of these problems, North and Secord flew to the Airbase in Central America on April 20 for a one-day meeting with the Commander, Steele, Rodriguez, and the military leadership of the FDN. During the meeting, North and Secord emphasized the importance of the Southern front and complained about the difficulty of getting stocks out of the FDN, thus preparing the FDN for the future storage of Southern front supplies directly at the Airbase. There was some misunderstanding as to whether the FDN were the legal owners of the aircraft, but North and Secord stated that the aircraft belonged to a private company dedicated to support all the Contras, both the FDN and the Southern front. In turn, the FDN leaders expressed their dissatisfaction with the C-7 aircraft. They were simply "too old" to operate effectively, Bermudez told them. He wanted bigger and faster aircraft. North responded that if he had the money to buy better aircraft, he would, but they were financing the operation with donated funds.[86]

The possible purchase for the FDN of Blowpipe surface-to-air missiles to use against the Sandinista HIND-D helicopters was also raised. In December 1985, Secord and Calero had tried to purchase Blowpipes from a Latin American country. The transaction proceeded to the point where the Enterprise placed a deposit on the missiles. But necessary approvals for the sale could not be secured, even though North enlisted the help of Poindexter and of McFarlane, who remained in contact with North by PROF machine even after he left the Government.[87]

After the April 20, 1986, meeting, the first shipment of lethal supplies by the Enterprise for the Southern front arrived at the Airbase to be stored by the resupply operation. At North's request, the Enterprise paid David Walker $110,000 for two foreign pilots and a loadmaster to fly missions inside Nicaragua so that U.S. citizens would not be exposed to possible shoot-down or capture.[88]

Secord took another step to overcome the resupply problems. He recruited Col. Robert Dutton to manage the resupply operation on a daily basis. Secord knew Dutton from their active duty together in the U.S. Air Force, where Dutton had considerable experience in managing covert air resupply operations. Gadd's role was phased out and on May 1, Dutton, retiring from the Air Force, was placed in operational command of the resupply operation, reporting to Secord, and increasingly over time, directly to North on all operational decisions of consequence.[89]

At the outset, Secord emphasized to Dutton that the air program would receive very little in the way of additional funding. Dutton was instructed to manage the operation with existing equipment and conserve resources carefully as the money provided was all "donated."[90]

When Dutton took over, he traveled to Central America to assess the operation. There were approximately 19 pilots, loadmasters and maintenance operators at the Airbase. In addition, Felix Rodriguez and his associate Ramon Medina coordinated with the Commander and oversaw the local fuel account. Dutton also examined the aircraft—two C-7s, one C-123, and the Maule—and found that, indeed, they were in "very poor operating condition."[91]

The resupply operation at the Airbase maintained a warehouse stocked with an assortment of munitions—light machine guns, assault rifles, ammunition, mortars, grenades, C-4 explosive, parachute rigging, uniforms, and other military paraphernalia. The crews lived in three safe houses and used a separate office with maps and communications equipment. By May, the Santa Elena airstrip, along with emergency fuel storage space and temporary housing, was finished.[92]

Because Secord (and later North) had impressed on Dutton the need for strict accountability given the limited nature of the donated funds, Dutton enforced a stringent set of accounting requirements: Expenditures had to be carefully documented and all missions fully reported. Moreover, Dutton devised an organization, based on a military hierarchy, that delineated each person's role and responsibility. Dutton also defined the legal constraints on the organization as he had understood from Secord: no Contra combatants could be airdropped into battle. These new requirements of accountability, reporting, and organization were followed for the remaining life of the operation.[93]

Despite these impending changes, North wrote to Poindexter expressing his weariness and warning that without Congressional authorization for CIA involvement, "we will run increasing risks of trying to manage this program from here with the attendant physical and political liabilities. I am not complaining, and you know that I love the work, but we have to lift some of this onto the CIA so that I can get more than 2-3 hrs. of sleep at night." [94]

Dutton's Reorganization Plan

Following his first trip to Central America in May, Dutton began drafting a reorganization plan for the Enterprise "to outline in one document exactly what the basic operating locations were, and who the key people were and what their responsibilities were."[95] The plan was reviewed, edited, and approved by both Secord and North.[96] The plan stated that "B.C. Washington has operational control of all assets in support of Project Democracy."[97] While Secord maintained that B.C. Washington meant "primarily myself and Robert Dutton," [98] Dutton testified that "B.C. Washington" described North and Secord.[99]

According to Dutton, the purpose of the reorganization plan was to disguise the role of Secord and North. The lawsuit brought by freelance journalisits Tony Avirgan and Martha Honey had named Secord and was generating publicity. North and Secord, according to Dutton, were concerned that Rodriguez, who had become disaffected, was providing information about the operation to Avirgan and Honey. North and Secord, therefore, wanted to create the pretense that they "had withdrawn from the operation, they were no longer part of it, and this new company called B.C. Washington, which represented the donators [sic], therefore the benefactors—that they had come in to take over the operation." [100] But, according to Dutton, "the fact was that Colonel North and General Secord's relationship with the organization had not changed one bit."[101] As Dutton acknowledged, "B.C. Washington" was a facade that North and Secord developed in order to cloak their role.[102]

The Southern Front Resupply

On May 24, 1986, the day after Dutton left Central America, another planeload of munitions, paid for by the Enterprise arrived at the Airbase for the Southern front. Because the FDN was reluctant to make arms available to the independent southern Contra forces, North and Secord decided in April 1986 that arms and other supplies would now be stored under the control of the Enterprise at the Airbase. This second direct shipment of arms to the Airbase to be delivered to the Southern front was part of the new plan. Together with the late April shipment, there were now more than $1 million in arms at the Airbase available for airdrop to the Southern front forces.[103]

The warehouse, however, was not large enough to accommodate the new munitions. Dutton had to ask the Commander for permission to expand the warehouse, while seeking North's approval for the additional cost of construction. After the Commander authorized the expansion, North relayed to Secord his approval for construction to proceed.[104]

With new arms and an expanded warehouse, Dutton had the material to deliver to the Southern front. However, while regular deliveries with the C-7 continued to the FDN in the North, no flights were being made to the South. North told Dutton that the Southern forces were adding 150 new recruits a day, but that they had neither enough weapons for the fighters nor enough medicine to treat the growing problem of mountain leprosy.[105]

On June 2, Castillo called North and told him that drops to the southern units were needed as soon as possible. Castillo advised North that Quintero had all the necessary vector information to make the drops. Following Castillo's request, two deliveries were prepared for the South totalling about 39,000 pounds, and on June 9, after coordinating with Castillo the location and needs of the Southern troops, the C-123 airplane tried to make an air drop. However, the plane could not locate the troops inside Nicaragua, and when it landed at the Santa Elena airstrip, it got stuck in the mud.[106]

The stuck plane caused consternation at the U.S. Embassy in Costa Rica. The month before, Oscar Arias had been inaugurated as the new President of Costa Rica. The new Costa Rican Government had told Ambassador Tambs that it had instructed that the airstrip not be utilized. Tambs, in turn, told Castillo to notify North and Udall Corporation that the airstrip had to be closed. Now Tambs was faced with explaining to President Arias why a munitions-laden airplane was stuck in the mud at Santa Elena. A plan was devised by Tambs, Castillo, and others at the U.S. Embassy to borrow trucks from a nearby facility to free the aircraft, but the plane was able to take off before the plan could be carried out.[107]

The needs of the FDN still had to be met. On June 10, North met with Calero who requested that the Caribou planes fly more missions inside Nicaragua. The Enterprise was just about to purchase additional arms for the FDN.[108] However, the most pressing need, North wrote to Poindexter, was neither money nor arms, but rather: "to get the CIA re-engaged in this effort so that it can be better managed than it now is by one slightly confused Marine Lt. Col." North further reported to Poindexter that "several million rounds of ammo are now on hand . . . Critically needed items are being flown in from Europe to the expanded warehouse facility at [the Airbase]. At this point, the only liability we still have is one of Democracy, Inc.'s airplanes is mired in the mud (it is the rainy season down there) on the secret field in Costa Rica." [109]

The decision to purchase additional millions of dollars in arms for the FDN was taken after the Enterprise learned from Bermudez and the FDN leaders that FDN stocks were getting low. Hundreds of tons of East European weapons were paid for in three installments between June 27 to July 16. The shipment, the last arms purchased for the Contras by North and Secord, never reached them.[110]

Despite the difficulties, North wanted to continue to airdrop supplies, especially to the South. As soon as the C-123 was freed from the mud, it embarked on another mission with a full lethal load for the southern troops. But this time, fog covered a mountain, and William Cooper, the chief pilot for the resupply operation, hit the top of a tree, knocking out an engine. After the plane reached the drop zone, Cooper could not locate the troops.[111]

Communicating by KL-43, North told Castillo that to facilitate further airdrops to the southern forces, he had "asked Ralph [Quintero] to proceed immediately to your location. I do not think we ought to contemplate these operations without him being on scene. Too many things go wrong that then directly involve you and me in what should be deniable for both of us."[112]

Meanwhile, North made further plans to ensure resupply to the Southern front. With the C-123 damaged in flight, the remaining C-7 aircraft could only make the trip to the South if it were able to refuel before the return trip, and the Santa Elena strip was not operational. North asked Dutton to look for another C-123, and with Tambs' assistance, arranged for a new flight pattern in which the empty C-7 aircraft, after making its drops, refueled at the San Jose International Airport in Costa Rica. The new refueling plan permitted two small drops of supplies to the Southern front. But, by the third week in July, $870,000 worth of munitions were still sitting at the Airbase waiting for the Southern forces. Despite all the efforts, the vision of a year before for the Southern front had yet to become a reality.[113]

Alternative Funding Sources: North's Response to Congressional Action

The Administration continued to seek an appropriation for the CIA to resume its program of covert assistance to the Contras. In early May, according to Poindexter, the President told him, "If we can't move the Contra package before June 9, I want to figure out a way to take action unilaterally to provide assistance." Poindexter wrote his deputy, Donald Fortier, "The President is ready to confront the Congress on the Constitutional question of who controls foreign policy. . . . George [Shultz] agrees with the President that we have to find some way and we will not pull out." [114]

North, who received a copy of Poindexter's PROF note, responded immediately with a suggestion: The Contras should capture some territory inside Nicaragua and set up a provisional government. The President would respond by recognizing the Contras as the true government and provide support. Asked by Poindexter whether he had talked to Casey about his plan, North replied, "Yes, in general terms. He is supportive, as is Elliott [Abrams]. It is, to say the least, a high risk option—but it may be the only way we can ever get this thing to work."[115]

The Money: Third Country Assistance

By the end of April 1986, the Contras' funding needs were critical. North told Fortier: "We need to explore this problem urgently or there won't be a force to help when the Congress finally acts."[116] The same day, North wrote to McFarlane that "the resistance support acct. is darned near broke," and asked for assistance in filling the gap:

> Any thoughts where we can put our hands on a quick $3-5M? Gaston [Sigur] is going back to his friends who have given $2M so far in hopes that we can bridge things again, but time is running out along w/ the money. So far we have seven a/c working, have delivered over $37M in supplies and ordnance but the pot is almost empty. Have told Dick [Secord] to prepare to sell the ship first and then the a/c as a means of sustaining the effort. Where we go after that is a very big question.[117]

An Aborted Solicitation

Despite North's reference to "Gaston," it was not Gaston Sigur, but Singlaub who went to the Far East in May 1986 in search of Contra aid. This time, Singlaub wanted to be sure that he would receive the official U.S. "signal" these countries had previously told him was a condition to their aid. Before he traveled to Countries 3 and 5, Singlaub spoke to Elliott Abrams at the State Department and, according to Singlaub, explained that he wanted to know "how the U.S. would send a signal." Singlaub testified that Abrams told him that he (Abrams) would send the signal.[118]

Singlaub arrived in Country 3, but before he could meet with his contact, Abrams told him to stop the plan. When Singlaub and Abrams later met, Singlaub testified that Abrams told him that the solicitation was "going to be handled by someone at the highest level." Singlaub assumed that it would be someone from the White House, although Abrams never gave him a specific name.[119] However, Abrams disputed Singlaub's testimony. While acknowledging that he spoke to Singlaub about Singlaub's proposed solicitation, Abrams testified that he never agreed to provide to Singlaub a U.S. Government signal for the solicitation.[120] Abrams' account is supported by the testimony of Richard Melton, at the time Director of the Office of Central American Affairs at the State Department, who was present during Abrams' conversations with Singlaub.[121]

The May 16, 1986, NSPG Meeting

On May 16, 1986, the President and his advisers discussed the issue of obtaining funds from third countries. In a memorandum to the President for the National Security Planning Group (NSPG) meeting, North suggested three ways to "bridge the gap" in funding: (1) a reprogramming of funds from DOD to the CIA ($15 million in humanitarian aid); (2) a Presidential appeal for private donations by U.S. citizens; and (3) a "direct and very private Presidential overture to certain Heads of State." The last source of funds would, as North put it, eliminate the need "to endure further domestic partisan political debate." [122]

Director Casey opened the meeting and explained the Contras' needs. The good news, he told the President, was that the Contras had infiltrated more troops into Nicaragua than ever before, and the troops were now being resupplied by air.[123] The "bad news" was that the Resistance was operating under the assumption that it would receive new funding at the end of May. Only $2 million remained from the humanitarian assistance appropriation.[124]

Later in the discussion, Secretary Shultz returned to the Contras' need for funds. Noting the unlikelihood of an immediate Congressional appropriation and the improbability that the intelligence committees could be persuaded to reprogram funds, Secretary Shultz suggested that third countries be approached for humanitarian aid. North added that the Intelligence Authorization Act of 1986 permitted the State Department to approach other governments for nonmilitary aid.[125]

No one at the meeting discussed the fact that Country 2 had already given $32 million to the Contras, including a $24 million donation committed to the President personally. Nor was it mentioned that several Far Eastern countries had been approached for donations or that Country 3 had given $2 million only 6 months earlier. Instead, Shultz was instructed to prepare for review by the President a list of countries that could be solicited.

Later that day, North told Poindexter that the urgency of the need had lessened: The Enterprise had that day received the last $5 million of the $15 million arms sales to Iran. North wrote Poindexter: "You should be aware that the resistance support organization now has more than $6 million available for immediate disbursement. This reduces the need to go to third countries for help." [126] North later testified that he wrote the message because "it was important he [Poindexter] understand that Secretary Shultz didn't need to go out that afternoon and go ask for additional help." Poindexter testified that he understood the $6 million to which North referred was coming from the Iranian arms sales, but he did not tell the President the $6 million was available. North testified that as he was leaving the NSPG meeting, he mentioned to Poindexter that Iran was supplying $6 million for the Contras, but that he did not know whether he was overheard.[127]

North wrote Poindexter that he did not know whether all those present at the NSPG meeting, such as Chief of Staff Donald Regan, knew of "my private U.S. operation." On the other hand, North noted to Poindexter, "the President obviously knows why he has been meeting with several select people to thank them for their 'support for Democracy' in CentAm."[128]

North also realized that disclosure of a significant sum of money earmarked for Contra support, but only made possible by arms sales to Iran, could prove politically embarrassing.

> The more money there is (and we will have a considerable amount in a few more days) the more visible the program becomes (airplanes, pilots, weapons, deliveries, etc.) and the more inquisitive will become people like Kerry, Barnes, Harkins, et al. While I care not a whit what they may say about me, it could well become a political embarrassment for the President and you.

He suggested that the problem could be "avoided simply by covering it with an authorized CIA program undertaken with the $15M" reprogrammed funding from the DOD budget.[129]

Poindexter approved North's recommendation to seek the $15 million reprogramming and responded to his concerns: "Go ahead and work up the paper needed for the $15M reprogramming. . . . I understand your concerns and agree. I just didn't want you to bring it up at NSPG. I guessed at what you were going to say. Don Regan knows very little of your operation and that is just as well." By May 28, however, it was clear that "the votes were not there," and the reprogramming effort was dropped in favor of a campaign to obtain Congressional support for the $100 million aid package.[130]

Meanwhile, the concerns that prompted North's silence at the May 16 NSPG meeting persisted: Who knew about the secret aid third countries had given earlier? In the prior 2 years, members of the NSC staff had approached several countries for financial assistance to the Contras. Of these, two had provided funds or other forms of assistance. Those solicitations were made without the knowledge of the Secretary of State and other senior diplomatic officials.

The December amendment expressly provided that soliticitations for humanitarian aid were not precluded. Now, Secretary Shultz and others were discussing making approaches to countries that had already contributed. Poindexter and North became concerned that their prior actions would be uncovered.

On June 10, North wrote Poindexter, "[A]t this point, I'm not sure who on our side knows what. Elliott has talked to Shultz and had prepared a paper re going to [Country 2 and Country 3] for contributions. Elliott called me and asked 'where to send the money.'" North asked Abrams to "keep quiet" until he talked to Poindexter. North added:

> At this point I need your help. As you know, I have the accounts and the means by which this thing needs to be accomplished. I have no idea what Shultz knows or doesn't know, but he could prove to be very unhappy if he learns of the [Country 2 and 3] aid that has been given in the past from someone other than you. Did RCM [McFarlane] ever tell Shultz.[131]

North recommended that Poindexter and McFarlane meet to discuss "how much Sec Shultz does or does not know abt [Country 2 and 3] so that we don't make any mistakes." [132] Poindexter declined to follow North's advice: "To my knowledge Shultz knows nothing about the prior financing. I think it should stay that way." [133]

Nonetheless, McFarlane informed Secretary Shultz. As the Secretary described the event, on June 16, 1986, he received a telephone call on a secure phone from McFarlane, who had by then been out of the Government for approximately 6 months. In a conversation that occurred completely out of context and long after the donation had been made, McFarlane told Secretary Shultz about the Country 2 donation to the Contras.[134]

Soon thereafter, Abrams recommended Brunei as a likely country from which to seek humanitarian assistance for the Contras. As Poindexter put it, "[t]hey have lots of money." [135] Brunei also qualified for another reason. The Secretary of State did not want to be beholden to any country that was a recipient of U.S. aid.[136] Brunei was not. Originally, the Secretary of State was to make the approach during a meeting with the Sultan of Brunei in June. Before Secretary Shultz left, Abrams asked North for a Contra account to which the money could be sent. North directed his secretary to prepare an index card with the account number on it. North told Abrams that the account was controlled by the Contras and Abrams so informed Secretary Shultz.[137] Following Poindexter's instructions, North did not reveal that the NSC staff "had access to the accounts." [138] North gave the index card to Abrams, who gave it to the Secretary of State. The Secretary decided, however, that he would discuss the general issue of Central America with the Sultan but that he would not make an actual solicitation. The card was not used on that trip.[139]

On August 8, 1986, Abrams met in London with a representative of the Government of Brunei. In an unusual occurrence for Abrams, he traveled under an alias. The two men first met at a London hotel, then walked in a nearby park where Abrams requested $10 million in bridge financing for the Contras. Asked by the official what Brunei would receive in return, Abrams responded, "Well, . . . the President will know of this, and you will have the gratitude of the Secretary and of the President for helping us out in this jam."[140] The official persisted, asking, "What concrete do we get out of this?" Abrams responded, "You don't get anything concrete out of it." Abrams then gave the account number that he had received from North to the Brunei official.[141]

Although the Sultan of Brunei eventually transferred the $10 million, the funds never reached the account for which they were intended. North testified that he had intended to give Abrams the number of the Lake Resources account controlled by Secord and Hakim, but the account numbers had been inadvertently transposed by North or by his secretary, Fawn Hall.[142]

Felix Rodriguez Becomes Disaffected

Shortly after North traveled to Central America in late April 1986, Rodriguez decided to leave Central America. Rodriguez testified: "I don't know if I got a sixth feeling or something, but after I saw the people in there, I didn't feel comfortable with it and I thought we had better leave." Rodriguez informed Steele, citing fatigue as the reason for his departure.[143]

Rodriguez met with Vice President Bush in Washington on May 1. He had arranged the meeting through the Vice President's National Security Adviser, Donald Gregg. The appointment scheduling memo for the meeting states: "To brief the Vice President on the status of the war in [a Central American country] and resupply of the Contras." Members of the Vice President's staff gave conflicting testimony over how this description was printed on his schedule. Sam Watson, the Vice President's Deputy National Security Adviser, testified that the memo was inaccurate, and that he did not provide the description. Phyllis Byrne, the secretary who typed the memo, testified that Watson had given her the description.[144]

In the Old Executive Office Building on his way to the Vice President's office, Rodriguez stopped by to tell North he was leaving the operation. Rodriguez said North asked him to remain in Central America, but he ignored the request. Escorted by Gregg and Watson, Rodriguez then met with the Vice President.[145]

Before Rodriguez could tell the Vice President that he was leaving Central America, North arrived and told the Vice President about the good job Rodriguez was doing. Embarrassed to tell the Vice President he was going to leave, Rodriguez left the meeting without discussing his resignation, and eventually returned to Central America. Rodriguez testified that "at no point in any of this conversation did I ever mention doing anything that was remotely connected to Nicaragua and the contras." Moreover, former Senator Nicholas Brady, who was also present at the meeting, testified that the resupply operation was not discussed.[146]

Rodriguez stayed in Central America, but his relationship with Dutton became increasingly strained. According to Dutton, they disagreed on how the operation should be run. At the same time, North had his own reservations that Rodriguez was "something of a loose cannon" who might reveal the operation.[147]

On June 8, Dutton complained about Rodriguez in a KL-43 message to North: "He now wants a $10K emergency fund that he will control. He also wants partial control of our fuel fund ($50K)." Cash funds translated into unaccountable slush funds so far as Dutton was concerned. Furthermore, with the establishment of cash accounts, the resupply operation would be "losing control of one of the most critical portions of the operation, that is the money." [148]

Rodriguez was summoned to meet with North and Dutton in Washington on June 25. North began by showing Rodriguez the organizational plan drawn up by Dutton, in which Rodriguez was designated "liaison officer." After North stated that he had intelligence that Rodriguez was compromising the operation by talking over open, unsecured telephone lines, Rodriguez complained that the poor condition of the aircraft, the communications equipment, and the lack of adequate radar had endangered the pilots and crew on the flight which hit the mountain, even though on that flight, despite the fog, the pilot was able to locate the drop zone by using the aircraft's radar. North, in turn, offered Rodriguez $3,000 a month to stay in the operation, which Rodriguez later accepted.[149]

Rodriguez testified that at the end of the meeting, he asked to see North alone. Rodriguez told North that he had learned "that people are stealing here," in particular Thomas Clines, a former associate of Edwin Wilson. Rodriguez expressed his concerns that arms were being sold at inflated prices. North disputed Rodriguez's conclusions and told Rodriguez that Clines was a patriot, and that he was not buying equipment, only helping to transport the goods. In fact, none of the arms furnished to the FDN and the Southern front since Rodriguez became involved in the operation were sold to the Contras. Instead, the Enterprise purchased arms with money obtained from the arms sales to Iran and private U.S. donors.[150]

At the close of the meeting, according to Rodriguez, North made one last comment. Congress was voting that day on the $100-million Contra aid legislation, and the television in North's office carried the floor debate. According to Rodriguez, North looked at the television and said: "Those people want me but they cannot touch me because the old man loves my ass." North did not recall that part of his conversation with Rodriguez. That meeting was the last between the two.[151]

New Legislation

On June 25, 1986 the House approved the Administration's request for $100 million in Contra aid. Although the bill would not become law for another 3 months, the vote ensured passage of the Contra aid legislation. The President announced at 11:30 a.m. that day that the vote "signal[led] a new era of bipartisan consensus in American foreign policy. . . . We can be proud that we as a people have embraced the struggle of the freedom fighters in Nicaragua. Today, their cause is our cause." [152]

The $100 million aid package marked the first time in more than 2 years that the House had voted to provide lethal assistance to the Contras. By June 1986, North had established air resupply to both the Northern and Southern fronts. The Enterprise had succeeded in flying lethal material to the Contra fighters inside Nicaragua; even Americans in the employ of North's organization were flying into that country, all financed by donated funds and proceeds from the Iranian arms sales overseen by North. None of North's activities were disclosed to Congress in advance of the House vote. Only 1 month later, before the aid bill had been signed, Poindexter would write to Congress that the NSC was complying with the letter and spirit of the Boland Amendment.[153]

Selling the Assets to the CIA

With the House vote in June, North's hopes to reengage the CIA in Nicaragua were on the verge of being realized. North was increasingly occupied with the Iran arms initiative, and he was anxious to give the Contra resupply operation back to the CIA. But North wanted the Enterprise to recoup its investment, and urged the CIA to buy the assets of the resupply operation in Central America.[154]

Secord had Dutton prepare a plan to present to the CIA. North wrote to Poindexter:

> We are rapidly approaching the point where the PROJECT DEMOCRACY [PRODEM] assets in CentAm need to be turned over to CIA for use in the new program. The total value of the assets (six aircraft, warehouses, supplies, maintenance

> facilities, ships, boats, leased houses, vehicles, ordnance, munitions, communications equipment, and a 6520' runway on property owned by a PRODEM proprietary) is over $4.5M.
>
> All of the assets—and the personnel—are owned/paid by overseas companies with no U.S. connection. All of the equipment is in first rate condition and is already in place. It wd be ludicrous for this to simply disappear just because CIA does not want to be "tainted" with picking up the assets and then have them spend $8-10M of the $100M to replace it—weeks or months later. Yet, that seems to be the direction they are heading, apparently based on NSC guidance.
>
> If you have already given Casey instructions to this effect, I wd vy much like to talk to you about it in hopes that we can reclaim the issue. All seriously believe that immediately after the Senate vote the DRF [Nicaraguan Democratic Resistance] will be subjected to a major Sandinista effort to break them before the U.S. aid can become effective. PRODEM currently has the only assets available to support the DRF and the CIA's most ambitious estimate is 30 days after a bill is signed before their own assets will be available. This will be a disaster for the DRF if they have to wait that long. North predicted "disaster" if his plan was not followed.[155]

The plan drafted by Dutton at Secord's request offered two options. The first was to sell the assets of the organization to the CIA at cost; the second would continue the operation on behalf of the CIA for a monthly fee. Although Dutton, Secord, and North differed in their public testimony over whose idea it was to include these two options (and Secord denied that he ever authorized a sale of the assets), Dutton's plan contemplated that the Enterprise would continue in operation. The plan indicated a preference for a sale because the funds generated would permit the Enterprise to engage in other covert action projects: "[W]e prefer option I with the proceeds from the sale going back into a fund for continued similar requirements." [156]

North testified that the idea to sell the Enterprise's assets to the CIA was Director Casey's. In a PROF note to Poindexter at the time, North said that the sale to the CIA would be the only way to finance purchases for the Contras prior to the time the Congressional appropriation became effective:

> Given our lack of movement on other funding options, and Elliot/[C/CATF's] plea for PRODEM [Project Democracy] to get food to the resistance ASAP, PRODEM will have to borrow at least $2M to pay for the food. That's O.K., and Dick is willing to do so tomorrow—but only if there is reasonable assurance that the lenders can be repaid. The only way that the $2M in food money can be repaid is if CIA purchases the $4.5M worth of PRODEM equipment for about $2.25M when the law passes.

Concluding his efforts to "sell" the project, North offered to send Poindexter a copy of Dutton's "prospectus," or, as he wrote, "the PROJECT DEMOCRACY status report. It is useful, nonattributable reading." [157]

Poindexter responded that he had not given Casey any "guidance" against the sale and, indeed, that he approved of North's plan. Poindexter explained that he had told CIA Deputy Director Robert Gates "the private effort should be phased out," but he agreed with North and asked him to talk to Casey about the plan to sell Project Democracy to the CIA.[158]

Clair George, the CIA Deputy Director for Operations, testified that North asked him to buy the aircraft, but that he declined because their use in private resupply could result in criticism of the CIA. "I wouldn't buy those planes if they were the last three planes in Central America," he said.[159]

The Resupply Operation is Interrupted

Relations between Felix Rodriguez and the resupply operation continued to deteriorate. Tensions increased when early in August a dispute erupted between Secord's deputy, Rafael Quintero, and Rodriguez. Ignoring Quintero's instructions not to use the aircraft, Rodriguez took an Enterprise-owned plane in Miami and flew into the Airbase with a load of spare parts and medicine. By the time Rodriguez arrived in Central America, Quintero was claiming that the plane had been stolen. Quintero gave instructions to refuel and send the plane back to Miami, full of the supplies. Rodriguez ignored the order and told the crew to unload.[160]

Rodriguez maintained that all the aircraft belonged to the FDN, and expressed his concern to the Commander that the Enterprise would pull out, taking the planes away from their rightful owners—the FDN.[161] On August 6, Dutton called North to tell him that Rodriguez "took C-123K from Miami." [162] North later complained to Gregg, the Vice President's National Security Adviser, that Rodriguez had "made off with an airplane," and asked him, "Will you call him and find out what the hell is going on?" Rodriguez told Gregg he had decided to tell Gregg "about what had been going on." [163]

Steele then called North to tell him that the "situation was not good." Steele warned North there was no one on the "scene who can take charge," and that the Commander was becoming a "potential problem" because he believed that the aircraft "belong[ed] to the DRF [Democratic Resistance Forces]." Steele added that Rodriguez was "enroute to see Don [Gregg]."[164]

North sent his colleague and aide, Lt. Col. Robert Earl, to sit in on the Rodriguez-Gregg meeting. Briefing Earl before the meeting, North portrayed Rodriguez as someone who had "insinuated himself into the organization and was giving rudder orders and it was not his place to do so." [165]

In the dispute with Rodriguez, Quintero had also accused Rodriguez of air piracy. Now, after conferring with Rodriguez, the Commander understood that he too was accused of air piracy, and feared the aircraft themselves would be taken.

On August 8, Rodriguez met with Gregg and set out his allegations about the Secord group. Gregg noted the points Rodriguez made: "using Ed Wilson group for supplies"; "Felix used by Ollie to get Contra plane repaired . . ."; "a swap of weapons for $ was arranged to get aid for Contras, Clines and General-Secord tied in"; "Hand grenades bought for $3 - sold for $9." Gregg, according to Earl, expressed shock about the involvement of Clines.[166]

On August 12, Gregg convened a meeting to discuss Rodriguez's allegations with a group of Administration officials involved in Central American policymaking: Steele; Ambassador Edwin Corr; Deputy Assistant Secretary of State Walker; the Chief of the Central American Task Force; and from the NSC, Earl and Ray Burghardt. Gregg testified that he "went over the notes with the people who were there." Without mentioning North's involvement, Gregg emphasized that he considered Clines not reliable but that he had faith in Rodriguez.[167]

Gregg knew by this time that North was involved in the operation. Rodriguez had made that clear at his initial August 8 meeting, and Gregg's notes reflect that knowledge.[168] Gregg testified that at no time did he pass that information on to the Vice President. Gregg did not report the meeting, because he believed it "was a very murky business. . . . We had never discussed the Contras. We had no responsibility for it. We had no expertise in it. I wasn't at all certain what this amounted to. . . . I felt I had passed along that material to the organizations who could do something about it, and I frankly did not think it was Vice Presidential level." [169]

The Resupply Operation Resumes

Shortly after Gregg's August 12 meeting, Steele was scheduled to meet with Dutton in Washington to resolve the dispute with the Commander. Dutton had told Steele by KL-43 that "It is everyone's intent to continue to support the effort," but that the aircraft were owned by an independent company, not the FDN, in part so they could be used to support the Southern front forces as well as the FDN. Secord, too, insisted that the aircraft belonged to a private company. Earl, North's deputy, told Secord by KL-43 on August 13 that the crew should simply pull out because the threat of a lawsuit against the Commander had "poisoned the atmosphere." Secord responded that there was more than "1 million dollars worth equipment" in Central America owned by the Enterprise, which had no intention of abandoning them. Secord explained that the "threat of air piracy lawsuit has nothing to do with [the Commander]. This was comment made to VP by Ollie ref Max [Felix Rodriguez] vice [the Commander]." [170]

Dutton later met with Steele in Washington and by the end of the meeting, Steele had agreed to help to solve the brewing "confrontation" between the Commander and the resupply operation.[171]

The warring parties reached an uneasy resolution after Steele returned to Central America. Steele took a more active role in overseeing the flights and was told to inform the Commander that, while the assets were made available to the Contra cause, they belonged to a private company whose desire was to turn them over to the CIA once the Agency resumed Contra support. Steele felt that he would have trouble persuading the Commander to accept this position until he was assured that the CIA would continue to provide support.[172]

On August 22, Dutton was able to reassure Steele:

> Received new guidance through Goode [North] from his boss. We are to stay in full operation supporting the drops until 1 Oct. At that time NSC says that CIA will have been in operation approx. 1 month. The CIA will go to [The Central American government] and explain that they, the CIA, are now in control.[173]

During the fall of 1986, problems continued in the resupply operation, but some success on both the Northern and Southern fronts was finally achieved. The resupply operation delivered more than 180,000 pounds of lethal supplies to the Southern front in September alone.[174]

In late August, North attended a Restricted Interagency Group meeting at which the Chief of the CATF and others were asked what steps the airlift—i.e., according to North, the "covert operation being conducted by this government to support the Nicaraguan Resistance"—should take now that the CIA was due to assume control. According to North, he described at that meeting the activities in which the Enterprise was engaged and sought approval from the Restricted Interagency Group to continue until the CIA could take over.[175] While the Chief of CATF acknowledged that North discussed airdrops to the Contras, he testified that he did not recall North discussing "his full service covert action program."[176]

On August 22, Dutton met with Quintero and devised a new plan for Southern front resupply that he presented to North: The initial arrival over the drop zone should be at dusk; once the zone has been identified by the pilots, repeated sequential drops would be made in the evening without communication to the troops. Castillo agreed with the plan, as did Steele. North also approved it.[177]

On September 4, North met with Poindexter. North asked Poindexter for the "go/no go" on sequential air deliveries to the Southern forces. Shortly afterwards, North told Secord to implement the new drop plan and conduct a "force feed" operation to the South where all supplies would be delivered sequentially in accordance with Dutton's plan.[178]

On September 9, Dutton flew with the crew in the second C-123 (now operational) inside southern Nicaragua to attempt a lethal drop to the troops Castillo had identified. But this mission was unable to locate the troops, prompting Dutton to propose to North using two aircraft on each mission to increase delivery potential once troops were located and to protect against increased Sandinista antiaircraft fire. Dutton also asked North for help on weather information and troop location. North approved the use of two aircraft and told Dutton to obtain weather information from Steele, and that he would speak to Castillo about troop locations. North cautioned Dutton not to personally fly inside Nicaragua again: The operation could not afford the exposure if the plane were shot down inside Nicaragua with Col. Robert Dutton at the controls.[179]

The pace of delivery stepped up. The resupply operation was finally becoming effective only weeks before the CIA would be back in the business. On September 11, a lethal drop was successfully made to the South using the C-123 while the C-7 delivered more arms for the FDN in the northern regions. Dutton reported the success of the southern delivery to North. On the 12th, three aircraft made more deliveries: a C-123 delivered 10,000 pounds to the South and a C-7 and a Maule delivered to the FDN. September 13 was "a red letter day," Dutton wrote to North. All five aircraft flew at the same time, with lethal loads dropped in both the North and South. "The surge is now in full force," Dutton relayed to North. The plan at last was working.[180]

Things were going so well that Dutton advised North that an additional $20,000 in cash was needed for the fuel fund and that the "C-123 is now armed with HK-21/7.62 machine gun on the aft ramp, bring on the MI-24." In fact, before Dutton returned to Washington, he could report to North that "all troops should now have equipment. Will stand by for direction from [Castillo]. He already told us not to send any more to [a Southern commandante] for a while. Never thought we would hear that." [181]

The "hand-to-mouth" operation that had limped along on limited resources for so long had, with the support of certain individuals, finally delivered the goods. Under North's direction, Dutton's operational control, Castillo's critical assistance in locating, dispatching, and scheduling the needs of the Southern troops, and Steele's coordination with the Commander, the South received arms, while deliveries continued apace to the FDN in the North. Indeed, for the rest of September, lethal drops were successfully made to both the FDN and the Southern forces. North duly reported the operation's success to Poindexter.[182]

When Dutton returned from Central America later that month, he met with North. North asked him to arrange a 1-day trip to the region so that he could personally thank the pilots and crew. North told him, "Bob, you will never get a medal for this, but some day the President will shake your hand and thank you for it."[183]

Dutton had also prepared a photograph album depicting the operation: the operational bases, drop zones, aircraft, munitions, and the crew replete with assault machine guns and other assorted weapons. Dutton showed the album to North, who liked it and said he wanted to show it to "the top boss."[184] North testified that he sent the album to Poindexter to show to the President, but never heard further about the album. Poindexter testified that he did not show the album to the President.[185]

North Expands His Special Operations

Even with the $100 million in appropriated funds becoming available in the near future, North tried to get other aid for the Contras. In May, Israeli Defense Minister Yitzhak Rabin had offered to provide Israeli military advisers for the Southern front. Although nothing came of this offer, North and Rabin met again in September and discussed an Israeli transfer of Soviet bloc weapons to the Contras. Rabin wanted "to know if we had any need for SovBloc weaps and ammo he could make avail." Rabin asked whether North's ship, the *Erria*, had left the Mediterranean. When North responded that it was in Lisbon, Rabin suggested that it dock at Haifa and "have it filled w/ whatever they cd assemble" of a "recently seized PLO shipment captured at sea."[186]

Poindexter sanctioned the Israeli arms offer: "I think you should go ahead and make it happen. It can be a private deal between Dick [Secord] and Rabin that we bless. . . . Keep the pressure on Bill [Casey] to make things right for Secord." Later, Poindexter cautioned "[a]bsolutely nobody else should know about this. Rabin should not say anything to anybody else except you or me." On September 15, North told Poindexter that "orders were passed to the ship this morning to proceed to Haifa to pick up the arms. Loading will be accomplished by Israeli military personnel." [187]

Despite Poindexter's caution, North later recounted the offer in a memorandum briefing the President for a visit from Israeli Prime Minister Shimon Peres. North wrote that Prime Minister Peres was likely to raise certain sensitive issues, such as the transfer of Soviet bloc arms by the Israelis "for use by the Nicaraguan democratic resistance." North recommended:

"If Peres raises this issue, it would be helpful if the President thanked him since the Israelis hold considerable stores of bloc ordinance compatible with what the Nicaraguan resistance now uses." Next to this sentence, Poindexter penciled: "Rabin. Very tightly held."[188]

As another expansion of his special operations, North received an offer from a third party to engage in sabatoge and other activities inside Nicaragua, to be financed with Enterprise funds. Poindexter approved the sabatoge plan, but instructed North not to become involved in conspiracy or assassinations.[189] According to North, the plan was never implemented because North was dismissed.[190]

The Operation Begins to Unravel: Disclosure of the Airstrip

Along with others in the Administration, North had helped to prevent the disclosure of his operation to Congress. The extent of his involvement in Central America, however, made him open to exposure. Although the U.S. Congress was not told of North's role in supporting the Contras, Central American governments—including that in Managua—were aware of it. Eventually, one of those governments chose not to remain silent.

Early in the morning on September 6, North learned that a Costa Rican official was threatening to hold a press conference announcing the existence of the Santa Elena airfield and alleging violations of Costa Rican law by North, Secord, and Udall Resources. North immediately called Assistant Secretary Abrams and told him that the press conference had to be stopped. Half an hour later, North had reached Ambassador Tambs and placed a conference call to Abrams.[191]

President Arias was scheduled to visit the United States, and Abrams "instructed Tambs to advert to the visit in a way which made it clear to President Arias that his visit was at risk." Abrams testified, "It was supposed to be diplomatic, but the message was supposed to be clear." North's notes reflect the idea of a greater threat than the cancellation of a White House visit: "Conf. call to Elliott Abrams and Amb. Lew Tambs; -Tell Arias; -Never set foot in W.H.; -Never get 5 [cents] of $80M promised by McPherson." An hour or two later, Tambs had made the call (but did not threaten the cutoff of aid), and the press conference was cancelled.[192]

In his report to Poindexter, North exaggerated his own role in the crisis. In a PROF note, North told Poindexter he had personally forestalled the crisis by calling the President of Costa Rica and threatening to cut off aid. North conceded to Poindexter that he may have overstepped the bounds of his authority: "I recognize that I was well beyond my charter in dealing with a head of state this way and in making threats/offers that may be impossible to deliver." Poindexter responded: "Thanks, Ollie, you did the right thing, but let's try to keep it quiet." North admitted in his testimony that he had not called President Arias. He claimed, instead, that the PROF message "was specifically cast the way it was to protect the other two parties engaged." [193]

The Costa Rican officials were delayed but not deterred by the call. On September 25, Costa Rican authorities held a press conference announcing the discovery of a "secret airstrip in Costa Rica that was over a mile long and which had been built and used by a Co. called Udall Services for supporting the Contras." Olmstead was named as the man who set up the airfield as a "training base for U.S. military advisors."[194]

North offered a "damage assessment" to Poindexter, assuring him that "all appropriate damage control measures" had been undertaken to "keep USG [U.S. Government] fingerprints off this." He wrote to Poindexter:

> Udall Resources, Inc., S.A. is a proprietary of Project Democracy. It will cease to exist by noon today. There are no USG fingerprints on any of the operation and Olmstead is not the name of the agent—Olmstead does not exist. We have removed all Udall Resources . . . to another account in Panama, where Udall maintained an answering service and cover office. The office is now gone as are all files and paperwork.[195]

The New York Times picked up the story. North, with assistance from Abrams and others, drafted press guidance for the Administration's response. The "guidance," approved by Poindexter, stated that the airstrip had been offered to the Costa Rican Government "by the owners of the property who had apparently decided to abandon plans for a tourism project." It concluded: "No U.S. Government funds were allocated or used in connection with this site nor were any U.S. Government personnel involved in its construction. Any further inquiries should be referred to the Government of Costa Rica." The U.S. Government's role in facilitating the construction of the airfield was concealed.[196]

At the same time North was promoting this cover story, he suggested to Poindexter that steps be taken to "punish" the Costa Rican Government for the disclosure.[197]

On September 30, North again argued that any attempt to benefit President Arias should be quashed: "Those who counsel such a course of action are unaware of the strategic importance of the air facility at Santa Elena and the damage caused by the Arias' government revelations." [198]

The Covert Operation Ends

The triumph of the airlift was short-lived. When Bill Cooper wrote to Dutton in late September after another successful drop, "Ho-Hum, just another day at the office," Dutton warned him to be careful.[199]

On October 5, a C-123 left the Airbase at 9:50 a.m. local time with 10,000 pounds of ammunition for a drop to the FDN inside Nicaragua. Cooper was in command, Buzz Sawyer the co-pilot, and Eugene Hasenfus the loadmaster who would actually drop the supplies. An FDN fighter was also on board for radio communications to the troops on the ground. Although the mission was to support the northern FDN forces, the plane flew a southern route to avoid Sandinista guns.[200]

First reports had the plane missing. Castillo sent Southern front troops to look for the plane and Dutton notified North's office in an attempt to mount a search operation. Earl attempted to arrange for a U.S. military search and rescue mission, while friendly governments in the region also organized a discreet search effort. Felix Rodriguez called the Vice President's Deputy National Security Adviser at his home, telling him the plane could not be found. It was all to no avail: the plane had been hit by a Sandinista SAM-7 over Nicaraguan territory. Three crew members were killed. Only Hasenfus survived, captured by the Sandinistas.[201]

Abrams called North and asked him to arrange to retrieve the bodies. The State Department issued press statements claiming no U.S. involvement in the mission.[202]

But the Enterprise had begun to unravel. The bodies of the crew were found bearing Southern Air Transport identification cards. The Federal Aviation Administration and the U.S. Customs Service began to investigate. With secrecy no longer possible, the resupply operation was shut down.[203]

Presidential Authorization and Knowledge

The President told the Tower Review Board that he did not know that the NSC staff was assisting the Contras.[204] After the Tower Report was issued, the President stated that private support for the Contras was "my idea." [205] In fact, the President knew of the contributions from Country 2.[206] According to Poindexter, the President's policy was "to get what support we could from third countries." [207]

In general, Poindexter understood that the President wanted the NSC staff to support the Contras, including encouraging private contributions. The President also knew, according to Poindexter, that North was the chief staff officer on Central America who was responsible for carrying out the President's general charter to keep the Contras alive. Poindexter regularly reported to the President on the status of the Contras, the fact that they were surviving, and "in general terms" North's role in facilitating their survival. As a result of these briefings, Poindexter thought that the President understood that both he and North were coordinating the effort to support the Contras. Poindexter also believed the President understood that "Col. North was instrumental in keeping the Contras supported without maybe understanding the details of exactly was he was doing." [208]

As to the level of detail provided to the President on the Contra support operation, Poindexter testified that he:

> would not get into details with the President as to who was doing what. The President knew that there was a Boland Amendment, he knew there were restrictions on the government. As he has said, I think, since November of 1986, that he did not feel that the Boland Amendment applied to his personal staff and that that was his feeling all along. I knew that.
>
> He knew the Contras were being supported, and we simply didn't get into the details of exactly who was doing what.[209]

Poindexter testified that on one occasion, he briefed the President with some specificity about the Contra support program, but understood that the President did not recall the briefing:

> Now, you know, the President doesn't recall apparently a specific briefing in which I laid out in great detail all of the ways that we were going about implementing the President's policy, and I frankly don't find that surprising. It would not, frankly, at the time have been a matter of great interest as to exactly how we were implementing the President's policy.[210]

Without getting to the "extraneous detail[s]" of how the President's policy was being implemented, however, Poindexter briefed the President on the Santa Elena airstrip in Costa Rica. Poindexter testified that in December 1985, after he returned from Central America, he specifically briefed the President about the local assistance provided in establishing the airstrip. In addition, Poindexter informed the President that the "private individuals" were also involved in establishing the airstrip. At the same time, Poindexter excluded the "extraneous detail" that North, through Tambs and Castillo, had facilitated the construction of the airstrip.[211] Similarly, while Poindexter thought that the President was aware of North's role in supporting the Contras, "it did not include something as specific as directing Col. North to conduct air supply operations." [212] North testified that he believed that the President approved his efforts to resupply the war. In fact, his actions support that belief. While

Poindexter testified that he did not show the photograph album detailing the operation to the President. North testified that he sent the album to the President through Poindexter and told Dutton that the President would thank Dutton for his efforts.

Conclusion

Although the North-Secord resupply operation ended on a disastrous note, with the shooting down of the Hasenfus plane, North had successfully managed, with the approval of his superiors, the covert program to assist the Contras for almost 2 years. The covert program that North had developed inevitably created conflicts of loyalties and shadings of duties among the persons whom he coopted to assist him. Felix Rodriguez was a close associate of Donald Gregg, the National Security Adviser to the Vice President. Yet North instructed Rodriguez not to tell Gregg that he was secretly working for North, and Rodriguez testified that he complied until the summer of 1986.[213] According to North, Director Casey wanted to insulate the CIA's career employees from North's operation so that the CIA could not be charged with a violation of the Boland Amendment.[214] CIA officials admitted that, far from their traditional role, they "actively shunned information. We did not want to know how the Contras were being funded . . . we actively discouraged people from telling us things."[215]

The CIA's attempt to remain uninformed failed as North sought out the assistance of CIA personnel in Central America. Particularly after Congress amended the law to allow the CIA to exchange intelligence with the Contras, many flights undertaken by the Enterprise were reported by CIA field offices to CIA headquarters; and at least one CIA Chief of Station provided information necessary for the Enterprise to make accurate airdrops and avoid Sandinista fire.

A CIA Chief of Station, the U.S. Ambassador to Costa Rica, and other operatives—both Government employees and private citizens—that North recruited with the approval of his superiors provided necessary support to his covert program of military support for the Contras. Yet throughout this time, the NSC staff repeatedly assured Congress that it was complying with the letter and spirit of the Boland Amendment.

The NSC staff's resupply operation provided essential support to the Contras' during 1986. Not only did North coordinate that effort, but he decided with Secord, after consulting the Contras' military commanders, what supplies were needed in order to conduct the entire Contra operation, both on the ground and in the air.

North directed the Enterprise's efforts on behalf of the Contras with Poindexter's approval and in the belief that the President likewise concurred. The result was that, with the help of other U.S. Government officials, North managed to provide to the Contras what Congress had not: a full-scale program of military assistance.

Table 3-1.—Resupply Flights Made by the North/Secord Resupply Operation During 1986

DATE	AIRCRAFT	FDN/SOUTHERN	NOTES
23 March 86	C-7 Caribou	N/A	Local Flight-No Cargo
24 March 86	C-7 Caribou	N/A	Local Flight-No Cargo
25 March 86	C-7 Caribou	N/A	Local Flights-No Cargo
26 March 86	C-7 Caribou	N/A	3 Local Flights-No Cargo
28 March 86	C-7 Caribou	N/A	2 Local Flights
28 March 86	C-7 Caribou	N/A	2 Local Flights
28 March 86	C-7 Caribou	N/A	2 Local Flights-No Cargo
31 March 86	C-7 Caribou	N/A	Local Flight-No Cargo
31 March 86	C-7 Caribou	N/A	Local Flight-No Cargo
31 March 86	C-7 Caribou	N/A	Training-No Cargo
1 April 86	C-7 Caribou	FDN	Lethal Cargo 3,440 lbs.
1 April 86	C-7 Caribou	N/A	Local Flight-No Cargo
4 April 86	C-7 Caribou	FDN	Lethal Cargo (2 flights) 9,200 lbs.
6 April 86	C-7 Caribou	N/A	Training
7 April 86	C-7 Caribou	FDN	Lethal Cargo (2 flights) 8,600 lbs.
8 April 86	C-7 Caribou	FDN	Lethal Cargo (2 flights) 11,500 lbs.
9 April 86	C-7 Caribou	FDN	Lethal Cargo (3 flights) 18,000 lbs.
10 April 86	C-7 Caribou	FDN	Lethal Gargo (2 flights) 7,900 lbs.
10 April 86	L-100	Southern	Arrived DZ on time but never saw inverted or strobe light. Aborted after staying in area 25 minutes. Lethal Cargo: 18 bundles
11 April 86	C-7 Caribou	FDN	Lethal Cargo (3 flights) 16,250 lbs.
11 April 86	L-100	Southern	Lethal drop UNO/ South received 20,000 lbs. ammo, grenades, rockets, launchers, rifles, magazines, etc.
1 May 86	C-7 Caribou	FDN	
1 May 86	C-7 Caribou	FDN	Lethal Cargo: Hard - 800 Soft - 700
5 May 86	C-7 Caribou	FDN	Lethal Cargo
5 May 86	C-7 Caribou	FDN	
7 May 86	C-7 Caribou	FDN	Lethal Cargo: 1000 lbs.
8 May 86	C-7 Caribou	FDN	Lethal Cargo
8 May 86	C-7 Caribou	FDN	Cargo: Soft 6300
9 May 86	C-7 Caribou	FDN	Cargo: Soft 3700
12 May 86	C-7 Caribou	FDN	
12 May 86	C-7 Caribou	FDN	Cargo: Soft 4150
12 May 86	C-7 Caribou	FDN	Lethal Cargo: 5140 lbs.
12 May 86	C-7 Caribou	FDN	Cargo: Soft - 6000
12 May 86	C-7 Caribou	FDN	Lethal Cargo: 3000 lbs.
13 May 86	C-7 Caribou	FDN	Lethal Drop
13 May 86	C-7 Caribou	FDN	Cargo: Hard - 3000 Soft - 2000
13 May 86	C-7 Caribou	FDN	Cargo: Hard - 3700 Soft - 1000
13 May 86	C-7 Caribou	FDN	Cargo: Hard - 500 Soft - 1500
13 May 86	C-7 Caribou	FDN	Cargo: Hard - 4150
14 May 86	C-7 Caribou	FDN	Cargo: Hard - 1000 Soft - 3850
14 May 86	C-7 Caribou	FDN	Cargo: Hard - 450 Soft - 4058
14 May 86	C-7 Caribou	FDN	Cargo: Hard - 2175 Soft - 3850
15 May 86	C-7 Caribou	FDN	Cargo: Soft - 5178
19 May 86	C-7 Caribou	FDN	Cargo: Soft - 600
20 May 86	C-7 Caribou	FDN	Cargo: Soft - 3756
20 May 86	C-7 Caribou	FDN	Cargo: Soft - 3778
20 May 86	C-7 Caribou	FDN	Cargo: Soft - 3714
20 May 86	C-7 Caribou	FDN	Cargo: Soft - 3778
21 May 86	C-7 Caribou	N/A	Airbase to Santa Elena airstrip and return
21 May 86	C-7 Caribou	FDN	Cargo: Soft - 3358
22 May 86	C-7 Caribou	FDN	Cargo: Soft - 358
6 June 86	C-123	N/A	Airbase to Santa Elena airstrip and return
9 June 86	C-123	Southern	Stuck in mud at Santa Elena 10,000 lbs of munitions, uniforms & medicines.
10 June 86	C-7 Caribou	FDN	Lethal Drop

Table 3–1.—Resupply Flights Made by the North/Secord Resupply Operation During 1986—Continued

DATE	AIRCRAFT	FDN/SOUTHERN	NOTES
11 June 86	C-123	N/A	Return with 5000 pounds to Airbase
12 June 86	C-7 Caribou	FDN	5000 pounds lethal
13 June 86	C-123		Loaded 7 pallets and Hold. Gross weight 7038 lbs. lethal. Bad weather put flight on hold until 1600
14 June 86	C-123	Southern	Lethal No drop zone contact
15 June 86	C-123	Southern	Lethal, no drops made. While over Costa Rica, A/C bounced over the trees & damaged engine. By Checking radar with LORAN (a Navigational aid), A/C then flew over drop zone twice, avoiding enemy anti-aircraft fire. No DZ contact with troops. Plane down 7-10 days
21 June 86	C-7 Caribou	Southern	Refueled at San Jose AP Cargo: HK-21 machine guns, cartridges, grenades Successful drop inside Nicaragua
	—		
8 July 86	C-7 Caribou	FDN	Successful drop of lethal supplies to the FDN inside Nicaragua
9 July 86	C-7 Caribou	FDN	Lethal 8000 lbs.
9 July 86	C-123	Southern	Airbase to Parrots Beak
10 July 86	C-7 Caribou	FDN	Drop 3 pallets of boots, 81 mm mortars & ammo plus small ammo, 6 pallets medical clothing & small ammo. DZ receipt confirmed.
12 July 86	C-7 Caribou	Southern	Lethal Cargo: Cartridges, grenades and non-lethal. Landed in San Jose, then returned to Airbase.
13 July 86	C-7 Caribou	FDN	Lethal drop made 1-1/2 mile from original DZ.
28 July 86	C-7 Caribou	FDN	Lethal drop.
29 July 86	C-7 Caribou	FDN	Lethal Cargo including ammunition is successfully dropped inside Nicaragua. Inbound-received sporadic 37 mm AAA when crossing a road. Receipt of cargo confirmed by radio
31 July 86	C-7 Caribou	FDN	Lethal cargo dropped inside Nicaragua. Receipt of cargo confirmed by radio
13 Aug 86	C-7 Caribou	FDN	Landed with 1500 lbs.
14 Aug 86	C-7 Caribou	FDN	Air drop 4580 lbs. lethal inside Nicaragua. 30 mins in DZ
15 Aug 86	C-7 Caribou	FDN	Air Drop 4580 lbs. lethal Dropped 7 FDN parachute school graduates.
15 Aug 86	C-7 Caribou	FDN	4030 lbs.
17 Aug 86	C-7 Caribou	FDN	Local Training
18 Aug 86	C-7 Caribou	Southern	4000 lbs. Lethal Load
18 Aug 86	C-7 Caribou	FDN	2,400 hand grenades
19 Aug 86	C-7 Caribou	FDN	Maintenance
20 Aug 86	C-7 Caribou	FDN	Still problems w/right engine
20 Aug 86	C-7 Caribou	Southern	C-7 Caribou returned w/4500 lbs. to be added to 7000 lbs.
21 Aug 86	C-7 Caribou	FDN	Still problems w/right engine
22 Aug 86	C-123	Southern	Abort
23 Aug 86	C-123	Southern	Aborted 10,000 lbs. lethal
25 Aug 86	C-123	Southern	Lethal Cargo Dropped
26 Aug 86	C-7 Caribou	Southern	Lethal 4800 pounds Returned w/load no radio contact no lights visible
27 Aug 86	C-7 Caribou	Southern	Lethal 4560 lbs. Bad weather.
28 Aug 86	C-7 Caribou	Southern	Lethal 4600 lbs.
5 Sept 86	C-7 Caribou	Southern	Lethal—10,000 lbs. No drop—20mm over DZ—no lights no radio contact—DZ UNO

Table 3-1.—Resupply Flights Made by the North/Secord Resupply Operation During 1986—Continued

DATE	AIRCRAFT	FDN/SOUTHERN	NOTES
7 Sept 86	C-123	Southern	Lethal HK-21 machine guns, cartridges, C-4 explosive, hand grenades, shells
9 Sept 86	C-123	Southern	Lethal No drop No contact in DZ Troops on ground unable to identify coordinates of DZ. Bad weather. Arrived at coordinates early
10 Sept 86	C-7 Caribou	FDN	Weapons & supplies.
11 Sept 86	C-7 Caribou	FDN	Lethal 384 81mm shells
11 Sept 86	C-123	Southern	Lethal load 10,000 lbs. No drop made Bad weather. Called North's office to get assistance w/ weather reports.
12 Sept 86	C-123	Southern	Drop 10,000 lbs. Rifles, grenades mortar shells, cartridges and non-lethal
12 Sept 86	C-7 Caribou	FDN	3800 lbs. of ammo grenades and non-lethal
13 Sept 86	C-123	Southern	10,000 lbs. dropped cartridges, hand grenades and non-lethal
13 Sept 86	C-123	FDN	5,000 lbs food 4,630 grenades
13 Sept 86	C-7 Caribou	FDN	1500 lbs of chutes & straps
13 Sept 86	C-7 Caribou	FDN	Additional delivery
14 Sept 86	C-123	Southern	10,000 lbs cartridges, shells, machine guns, and grenades
14 Sept 86	C-7 Caribou	FDN	mortar shells
17 Sept 86	C-123	Southern	9850 lbs. cartridges, C-4 explosive, fuses, detonators, and grenades.
19 Sept 86	C-123	Southern	10,500 lbs. lethal
20 Sept 86	C-123	FDN in the Southern Provinces	10,500 lbs. lethal 3 machine guns, ammo, grenades, all received in good shape.
23 Sept 86	C-123	Southern	10,100 lbs 15 pallets Lethal: grenades, AK's 702 ammo
29 Sept 86	C-123	Southern	Lethal Drop Cartridges, shells, and grenades
29 Sept 86	C-7 Caribou	FDN	2,400 hand grenades
30 Sept 86	C-7 Caribou	FDN	Lethal Drop
30 Sept 86	C-7 Caribou	FDN	Lethal
5 Oct 86	C-123	FDN in the Southern Provinces	Lethal; Plane shot down. Carrying guns & other ammo. Left Airbase at 0950. Full fuel and 10,000 lbs. route same as usual. Planned to return to Airbase 1530. Never reached DZ.

Source: Flight logs and mission reports compiled by air resupply operation pilots and flight crew.

Chapter 3

1. Secord Test., *Hearings*, 100-1 at pp. 57-65; (hereinafter "Secord"), North Test., *Hearings*, 100-7 I at 162; (hereinafter "North"), Signed Memorandum of Interview of Richard V. Secord, Aug. 18, 1987 (hereinafter "Secord Interview").

2. *Id.*

3. Secord, *Id.*

4. Secord, *Hearings*, 100-1 at 58.

5. *Id.*; Owen, *Hearings*, 100-2, at p. 36. See also Section on Enterprise of the Narrative.

6. See Note 1 supra.

7. *Id.*

8. *Id.*

9. *Id.* Although the participants did not decide to authorize specific action, they agreed on the need to conduct resistance activities inside Nicaragua's urban areas. This too was a subject that North and Calero had previously discussed. Indeed, North had in December introduced Calero to David Walker, a British insurgency expert, to conduct such operations.

10. North Test., *Hearings*, 100-7, at 94.

11. McFarlane Test., *Hearings*, 100-2, at 96-97.

12. Poindexter Test., *Hearings*, 100-8, at 8 (hereinafter "Poindexter"). See also North, 100-7, at 150 and Secord at 60-61, 138.

13. International Security and Develop. Act of 1985, Pub. L. 99-88, 99 Stat. 149.

14. Supplemental Appropriations Act for 1985, Pub. L. 99-88.

15. Calero Test., *Hearings*, 100-3, at 12.

16. Duemling Deposition, 8/20/87, at 9-11.

17. Duemling Deposition, 8/20/87, at 46-48.

18. Duemling Deposition, 8/20/87, at 28-29; Abrams Test., 100-3 at 35-36.

19. Secord Test. *Id.*, Secord Interview and Deposition of Richard Gadd, May 1, 1987 at 6-7.

20. *Id.*

21. *Id.*; Castillo Test., *Hearings*, 100-4, at 40 et seq. (hereinafter "Castillo").

22. Poindexter, Test., *Hearings*, 100-8, at 75.

23. Tambs Test., *Hearings*, 100-3, at 367-68, 375, 427; North, 100-7, 7/8/87, at 150.

24. North Test., *Hearings*, 100-7, Part I at 173-174. North did not identify which members of the Restricted Inter-Agency Group were present during these discussions. (*Id.*)

25. Abrams Test., *Hearings*, 100-5 at 20.

26. North Notebooks, 8/10, 8/18/85; Castillo at 11-15, Exhibits TC-1 and TC-2 at 87 et seq.

27. Memo from TC (Owen) to BG (North), 8/25/85, RWO Exhibit 9; Castillo at 14 and 60 et seq.

28. Owen at 351; Castillo at 16; North Notebooks 9/3/86 and 9/17/86; Interview of Joseph Hamilton; H6345 (summary of CSF Ledger).

29. North Notebooks 10/3/85; Gadd Dep., 5/1/87, at 19-22.

30. North Notebooks, 9/10/85.

31. Gregg Dep., 5/18/87 at 27.

32. North Notebooks, 9/16/85.

33. Rodriguez Test., *Hearings*, 100-3, at 289-90; Ex. FIR-1 (hereinafter Rodriguez).

34. Poindexter Test., *Hearings*, 100-8, at 75.

35. North Notebooks 7/23-24/85, 8/3/85, 8/15/85; Dutton Test., *Hearings*, 100-3, at 212 and 283 (hereinafter Dutton); Coors Test., *Hearings*, 100-3, at 44.

36. Gadd Dep., 5/1/87, at 13-16; Dutton at 212.

37. Gadd Dep., 5/1/87, at 16-19; Secord Interview Para. 3; North Notebooks 11/15/86; Abrams Test., *Hearings*, 100-5, at 145-46; N12087 PROF Note 11/20/85, Exhibit OLN-87.

38. Secord Interview, Para. 4; Gadd Dep., 5/1/87, at 12-13. While the search for aircraft continued, in October 1985, North directed troop salary payments to the FDN and in December 1985, another 85,000 pounds of ammunition and other arms arrived for the FDN from the Enterprise.(*Id.*, CSF Adjusted Ledger)

39. McFarlane, Test., *Hearings*, 100-2, at 28-29.

40. North Test., *Hearings*, 100-7, at 78-79.

41. Sigur Test., *Hearings*, 100-2, at 286-287.

42. North Test., *Hearings*, 100-7, at 78-79.

43. Ex. RCM-26.

44. Sigur Test., *Hearings*, 100-2, at 288-89.

45. Sigur Test., *Hearings*, 100-2, at 289.

46. Sigur Test., *Hearings*, 100-2, at 290.

47. North Test., *Hearings*, 100-7, at 79.

48. Sigur Test., *Hearings*, 100-2, at 291, *id.* at 286-292.

49. Owen Test., *Hearings*, 100-2, at 11-14; North Test., *Hearings*, 100-7, Part I, at 208. Congressman Jenkins gave this political context for the contribution from Country Three: "In October 1985 when the NSC staff was scheduling an appointment for Colonel North to meet with one of these countries that later contributed $2 million, I was involved in a tough legislative battle in this House. On October 12, I believe, of 1985, this House passed a textile bill, very controversial. At that very time, Colonel North apparently was soliciting, from a nation that was impacted by this bill, funds secretly and that country later delivered $2 million, according to the testimony. The President vetoed that bill in December 1985 and between December 1985 and August 1986, when the Congress decided to sustain the President by an eight-vote margin, there were entreaties apparently made to many other nations that were impacted by this legislation." McFarlane 100-2, at 279.

50. S4344, Handwritten Notes, 9/24/85.

51. Owen Test., *Hearings*, 100-2, at 355; Duemling Dep., 8/20/87 at 65-68 and 60-63.

52. Owen Exhibit RWO-14, 100-2 at 825-26; RWO-17, 100-2 at 831. The contract between Institute for Democracy, Education and Assistance, Inc. and NHAO provided that as a condition of the receipt of this grant, the grantee [IDEA] agrees . . . "that Mr. Robert Owen shall not during the term of this Grant perform any service which is related to the acquisition, transportation, repair, storage or use of weapons, weapons systems, ammunition or other . . . [lethal aid] " RWO-17, Duemling Dep. at 69.

53. Owen Test., *Hearings*, 100-2, at 380.

54. Gadd Dep., 5/1/87, at 24-26.

55. North Test., *Hearings*, 100-7, at 268.

56. Poindexter Depo., 5/2/87 at 64; Memo from North to Poindexter, 12/2/85.

57. PROF Note, North to Poindexter, 12/5/85, 22:12:05.

58. N49179, Memo, North to Poindexter, 12/10/85.

59. *Id.*

60. Poindexter at 222-27, 310; Tambs at 380-81; Deposition of Poindexter, 5/2/87 at 64-68.

61. Singlaub Test., *Hearings*, 100-3, at 89-90; Exhibit JKS-6 at 462-65.

62. N10720-28, Memo from Burghardt to Poindexter, 1/14/86.

63. Gadd Dep., 5/1/87, at 15, 21 and 26.

64. North Test., *Hearings*, 100-7, at 140-41; 151.

65. Gadd Dep., 5/1/87, at 42; North at 7/7/87 at 84, 150, Secord at 65, 252; Dutton at 208-09; Poindexter at 75; North Notebooks 1/15/86.

66. At the end of December 1985, Steele called North to report that all was "OK" on final flight arrangements at the Airbase and that fuel for the aircraft had to be handled on a "pay as you go" basis. On January 6, North talked to Steele about problems with Felix Rodriguez, including security concerns and Rodroguez' ties to an arms dealer connected to the military of a Central American country. Despite various organizational problems, Steele called North a week later to report significant progress. The Commander was now "fully aboard." The building construction for a warehouse was underway, and all that was needed was money to pay for the fuel. On January 16, North discussed with Steele the 3 Butler buildings Gadd was constructing and operational security at the Airbase. North talked to Steele again on January 20 concerning additional operational problems and determined (apparently after a call from the Chief of the CATF) that flight planning data for resupply aircraft should be passed to Steele for local coordination. North Notebooks 12/19/85, 12/23/85, 1/6/86, 1/20/86, 1/31/86; Depo. of Col. James Steele 4/21/87 at 27, 68.

67. *Id.*; North Notebooks 1/16/86; Dep. of Gen. John Galvin, 6/13/87 at 32-33; Castillo, Test., *Hearings*, 100-4, at 15-16.

68. *Id.* By this time, North had also coordinated with Castillo, Quintero's arrival and help in overseeing the airstrip construction, particularly in obtaining local supplies. (*Id.*)

69. Secord Int. Para. 8; North Notebooks Feb. 27, 1986.

70. Rodriguez Test., *Hearings*, 100-3, at 292.

71. On Feb. 18, North wrote in his notebook: "Call [Chief of the CATF at the CIA] ASAP. Find A/C: L-100 C-7 standby. See Duemling - Americit crews." The C-7 at that time was still on standby while the L-100 were the aircraft Gadd had chartered from Southern Air Transport to deliver humanitarian supplies under NHAO contract from the United States to Central America. North Notebooks 2/18/86 and 2/29/86; Gadd at 34 et. seq.; C/CATF Dep. I 5/1/87 at 91, 103-05, 114.

72. *Id.*

73. Owen, RWO-11, 100-3 at 816-17.

74. Owen, at 358, and RWO-14 at 825.

75. Poindexter at 222-27; Castillo Test., *Hearings*, 100-4, at 33.

76. *Id.*

77. See Table of Resupply Flights made by the North/Secord Resupply Operation During 1986, infra.

78. RWO-14a, 100-3 at 825.

79. Gadd Dep., 5/1/87, at 39; KL-43 Message April 1986; OLN-88, *Hearings*, 100-7, Part 3.

80. Gadd Dep., 5/1/87, at 34-35; KL-43 Message 4/8/86, Secord to Quintero (82330Z Apr 86).

81. KL-43 Message, 4/9/86 [Copp: 4/9/86 0945].

82. Castillo at 21-23; C/CATF Dep. I 5/1/87 at 114.

83. Castillo at 24; Dep. of Ian Crawford, 3/13/87 at 60-61; Secord Ex. 3, 100-1 at 418-20.

84. Castillo at 22; Exhibit TC-6, 100-4. (KL-43, 4/12/86); Dep. of Ian Crawford, 3/13/87, pp. 58-63.

85. See Note 77 supra; Crawford Dep., 3/13/87 at 58-63; Dep. of CIA Field Operations Officer, at 45 et. seq.

86. Rodriguez Test., *Hearings*, 100-3, at 299; Gadd at 37-38; Secord Int. at Para. 6.

87. North to McFarlane Memorandum dated Dec. 4, 1984; Secord at 66-67; Exhibits OLN-83, 84, 281, 282. See also Chapter 2.

88. Secord at 68; Secord Int. Para. 8; H893 Wire Transfer; Dutton at 214.

89. Secord at 64; Dutton at 204-08.

90. Dutton at 208. See also Dutton Chronology of Events for May.

91. Dutton at 208, 212-13; Dutton Chronology of Events, entry for 5/19/86.

92. *Id.*

93. Dutton at 208, 223; Secord at 68.

94. PROF Note, OLN to JMP, 5/16, 19:29:43.

95. Dutton, *Test., Hearings, 100-3*, at 54.

96. Dutton, *Test., Hearings, 100-3*, at 118.

97. Dutton Ex. RCD-14.

98. Secord 5/7 at 111.

99. Dutton at 119-20.

100. *Id.* at 119-20.

101. *Id.*

102. *Id.*

103. Dutton at 213-14; Secord Int. Para. 8; Exhibits RCD-14 and RCD-15, 100-3.

104. Dutton at 214-15; Secord at 251.

105. Dutton at 215 and 218.

106. Dutton at 216-17; KL-43 Message dated 6/9/86; Pilot Mission Reports; Secord at 74.

107. KL-43 #R00022; Tambs at 381-83 and 407; Castillo at 32-33; Interview of John C. Taylor, Commander of the Office of Defense Cooperation, U.S. Embassy, Costa Rica.

108. North Notebooks, 6/10/86; Secord Int. Para. 7; H495 Wire Transfer.

109. PROF Note, North to Poindexter, 6/10/86, Ex. OLN-70, 100-7, Part III.

110. See Note 108 supra.

111. Dutton at 217; Pilot Mission Report of Bill Cooper and John Piowatty; Dutton Chronology for June. See also Note 74.

112. KL-43 Message North to Castillo 6/16/86, Ex. OLN-89, 100-7, Part III.

113. Dutton at 217-219; Ex. RCD-14 at 8.

114. PROF Note, 5/2/86, Ex. JMP-45, 100-8.

115. PROF Note, Ex. OLN-287, 100-7, Part III.

116. PROF Note, Ex. OLN-27, 100-7, Part 3.

117. PROF Note, Ex. OLN-4; 100-7, Part III.

118. Singlaub Test., *Hearings*, 100-3, at 90.

119. *Id.* at 91.

120. Abrams Test. *Hearings*, 100-5, at 56-58, 124.

121. Depo. of Richard Melton, May 27, 1987, at 14-15, 20-21, 25 and 32.

122. Memo, Ex. JMP-50, N3873-34; N3738 Drop by CSIS Briefing (Robinson) 6/10/86.

123. N10290, Memo from Burghardt to McDaniel, 6/4/86.

124. N3738, Drop by CSIS Briefing (Robinson) 6/10/86.

125. N10296, Memo from Burghardt to McDaniel, 6/4/86. See also Shultz Test., at 17-19.

126. PROF Note, North to Poindexter, Ex. OLN-10, 100-7, Part III.

127. North Test., *Hearings*, 100-7, Part 1, at 311-13.

128. *Id.* at 310; Ex. OLN-10, 100-7, Part III.

129 *Id.*

130. Ex. OLN-11, 100-7, Part III; PROF Note, Ray Burghardt to RBM, 5/28/86, 18:36, N18096.

131. PROF Note, North to Poindexter, Ex. OLN-70, 100-7, Part III.

132. *Id.*

133. *Id.* and Ex. JMP-52, 100-8.

134. Shultz Test., *Hearings*, 100-9, at 4, 18-19, Ex. GPS-8.

135. PROF Note, 6/10/86 Poindexter to North, Ex. OLN-81.

136. Abrams Test., *Hearings*, 100-5, at 34; Shultz at 19.

137. Shultz Test., *Hearings*, 100-9, at 20.

138. PROF Note, 6/10/86, Poindexter to North, Ex. OLN-81.

139. Shultz Test., Hearings at 19-20.

140. Abrams, 100-5 at 126-31.

141. Abrams, 100-5 at 34.

142. Abrams, 100-5 at 42; North, 100-7, Part 1 at 33; Hall, 100-5 at 88.

143. Rodriguez Test., *Hearings*, 100-3, at 252-55.

144. N46325; Memo from Don Gregg to Debbie Hutton, 4/16/87; Deposition of Phyllis M. Byrne, 6/16/87 at 13; Samuel Watson Dep., 6/16/87 at 26-27.

145. Rodriguez at 257-60.

146. *Id.*; Depo. of Nicholas Brady, Oct. 1, 1987.

147. Dutton at 255-56; Dep. of Robert Earl 5/22/87 at 163.

148. KL-43 Message Dutton to North, 6/8/86 Ex. RCD-1; Dutton at 220-21.

149. Dutton at 221-22; Rodriguez at 305 et seq.

150. Rodriguez at 306. See Note 65.

151. *Id.*; North, 100-7, Part 1 at 48.

152. N37096, Memo dated 6/25/86, Presidential Statement: Victory of Contra Aid Legislation.

153. Poindexter, 100-8 at 104.

154. North, 100-7 at 312; Dutton at 222-25.

155. Ex. OLN-198, 100-7, Part III.

156. Secord Ex. 4, 100-1 at 439.

157. Ex. OLN-158, 100-7, Part III; North, 7/14/87 at 146.

158. PROF Note, 7/86, 15:31, Poindexter to North. North continued to hope, up through September, that the assets could be sold. On Sept. 3 or 4, North met with Ambassador Tambs and told him that he wanted to sell the assets because the Freedom Fighters were out of money. North hoped to raise about $5 million. Tambs was skeptical. He knew that the Costa Rican Government closed down the airstrip. Tambs asked North: "How could you sell something which you couldn't use?" North did not reply. Tambs, 5/28 at 170-72, 234.

159. George Test., *Hearings*, 100-11, at 35-36.

160. Dutton at 225-226; Rodriguez at 307-309; KL-43 Messages in July and August.

161. *Id.*

162. North Notebooks, 8/6/86.

163. Dep. of Donald Gregg at 11-12.

164. North Notebooks, 8/7/86.

165. Dep. of Robert Earl, 5/2/87 at 101-04.

166. Rodriguez at 309-10; Earl at 166-69. Sam Watson, Gregg's deputy, was also at the meeting. His notes state: "Felix—Tom Clines, Secord—Ripping Off Contras—Fraud, a crime to profit." N46663.

167. Gregg Dep. 5/18/87 at 28-29.

168. Gregg Dep., 5/18/87 at 14, 34.

169. Gregg Dep. at 30-31; Earl Dep. at 175.

170. KL-Messages # 340, 342, 347, 351, and 345. See also Secord Ex. 3, 100-1 at 430 et seq; Dutton at 225-27.

171. Dutton at 225-27; Steele Dep. at 72.

172. See Note 170 supra.

173. KL-43 8/22/86 Secord Exhibit 3 at 431.

174. Dutton at 234.

175. North, 100-7 I at 86-89 and 158.

176. Hearings, Testimony of C/CATF 8/5/87 at 66-67.

177. Dutton at 229-30; KL-43 8/22/86 RCD-5.

178. *Id.* North Notebooks 9/4/86; KL-43, Secord Ex. 3 at 434.

179. Dutton at 230-35 and accompanying exhibits. RCD-6, 7, 8 and 9.

180. *Id.*

181. KL-43 Messages Ex. RCD-9, 10 and KL-43 Message Dutton to North, 9/17/86, #423.

182. Dutton at 232-34; Ex. OLN-162, 100-7; PROF Note North to Poindexter Sept. 15, 1986.

183. Dutton at 236.

184. Dutton at 236-37.

185. North at 133; Poindexter at 227.

186. PROF Note, 9/12/86, 21:50, North to Poindexter (N12163).

187. Ex. OLN-60, OLN-160, OLN-161, 100-7, Part III; Ex. JMP 60, 100-8.

188. Ex. OLN-303, 100-7, Part III.

189. North Test., Executive Session.

190. *Id.*

191. North Notebooks 9/6/86; Tambs at 210.

192. *Id.*, Abrams at 124-25.

193. Ex. OLN-203, 100-7, PROF Note, 9/7/86, 11:18:45, Poindexter to North; Ex. OLN-301, 100-7, Part III; North Test., 100-7 I at pp. 86-87.

194. PROF Note, 9/25/86, 11:23, Poindexter to North.

195. N18064-65, Prof Note, 9/25/86, 17:39:51 North to Poindexter

196. N30783, Memo North to Poindexter, 9/30/86

197. N18063, Prof Note, 9/25/86, 11:23:45, Poindexter to North

198. N30782, Memo, North to Poindexter, 9/30/86

199. Dutton at 237-38.

200. Dutton at 238-39; KL-43 Message, Ex. RCD-12.

201. *Id.*

202. Abrams Test., *Hearings*, 100-5, at 62.

203. Dutton at 239-40.

204. Report of the President's Special Review Board, February 26, 1987 at III-24.

205. The New York Times, May 16, 1987 at A1.

206. McFarlane Test., *Hearings*, 100-2, at 17.

207. Poindexter Test., *Hearings*, 100-8, at 54-55.

208. Poindexter, 100-8, at 54-55, 73-76, 89, 222-29.

209. Poindexter, 100-8 at 101.

210. *Id.*

211. Poindexter, 100-8 at 225-226.

212. *Id.* at 229.

213. Rodriguez, 100-3 at 67.

214. North at 223-225.

215. Gates Test., Senate Select Committee on Intelligence Dec. 4, 1986, at 38.

Chapter 4

Private Fundraising: The Channell-Miller Operation

While donations from other countries and profits from the Iran arms sales provided most of the money for lethal assistance to the Contras after the Boland Amendment, the network of private foundations and organizations formed by Carl R. "Spitz" Channell and Richard R. Miller also played a role. Channell's principal organization, the tax-exempt National Endowment for the Preservation of Liberty (NEPL), used White House briefings and private meetings with the President to raise more than $10 million from private contributors, almost all for the Contra cause. Over half of this total came from two elderly widows—Barbara Newington and Ellen Garwood—who made the bulk of their contributions after receiving private and emotional presentations by Lt. Col. Oliver North on the Contras' cause and military needs. One dozen contributors accounted for 90 percent of NEPL's funds in 1985 and 1986.

Of the $10 million that was raised, only approximately $4.5 million was funnelled to, or spent on behalf of, the Contras, including more than $1 million for political advertising and lobbying. The rest was retained by Miller and Channell for salaries, fees, and expenses incurred by their organizations, including compensation to their associates, David Fischer and Martin Artiano.

The NEPL money spent for direct and indirect assistance to the Contras was disbursed primarily by Miller at the direction of North. Approximately $1.7 million was "washed" by Channell through Miller's domestic and Cayman Island entities—International Business Communications (IBC) and I.C., Inc.—to the Enterprise, where it was commingled with funds from third-country contributions and the Iranian arms sale. Another $1 million was passed at the direction of North through Miller's entities to accounts controlled by Adolfo Calero, and approximately $500,000 was distributed at North's request to other persons and entities engaged in activities relating to the Contras.

Channell and Miller made elaborate efforts to conceal the nature of their fundraising activities and North's role. Certain funds received by NEPL for Contra assistance were allocated on Channell's books to a project denominated "Toys," a euphemism for weapons. The NEPL and IBC employees were instructed to refer to North by a code name, "Green." Funds were transferred to the Contras, not directly—which would be traceable—but through Miller's anonymous offshore entity, I.C., Inc. North misrepresented to several White House officials the nature of the network's fundraising activities. For instance, the President apparently was led to believe that the funds were being raised for political advertising; the President's Chief of Staff, Donald Regan, was deliberately kept in the dark by North and Admiral John Poindexter; and North misrepresented to Congress and White House personnel the nature of his involvement in the activities of NEPL and IBC. As a result, the network was able to operate successfully until the latter part of 1986, when increased Government aid to the Contras and public disclosure of both the Iranian arms sales and the Contra resupply network made further assistance efforts unnecessary and unwise.

By using a tax-exempt organization to funnel money to the Contras—for arms and other purposes—Channell and Miller provided tax deductions to donors. As a result, the U.S. Government effectively subsidized a portion of contributions intended for lethal aid to the Contras. In the spring of 1986, Channell and Miller pled guilty to criminal tax charges of conspiring to defraud "the United States Treasury of revenues to which it was entitled by subverting and corrupting the lawful purposes . . . of NEPL by using NEPL . . . to solicit contributions to purchase military and other non-humanitarian aid for the Contras." At his plea hearing, Channell identified Miller and North as his co-conspirators.

The Background

Carl R. "Spitz" Channell

Channell, 42, was raised in Elkton, West Virginia. He attended American University from 1963 to 1968 and then, for a brief period, the Union Theological Seminary in Virginia. He left to join the Army and, after service for 3 years, received an honorable discharge.[3]

In 1976, Channell began to work for Terry Dolan, the founder of the National Conservative Political Action Committee (NCPAC). His initial responsibility was assisting in Congressional campaigns. After the

1978 elections, Dolan asked Channell to shift to fundraising. To Channell's own surprise, he was an instant success, and was named by Dolan as NCPAC's first national finance chairman. In that position, Channell concentrated on NCPAC's "high dollar donor program" and set up a number of briefings in Washington for potentially large contributors.[2] This fundraising method was to become the standard operating procedure for the Channell-Miller network.

In 1982, Channell left NCPAC to form his own political consulting organization, the Channell Corporation, to offer fundraising advice to campaigns and candidates. By 1984, he began to establish a network of other politically-oriented foundations. First, he founded the American Conservative Trust (ACT) as a Political Action Committee (PAC). At approximately the same time, he incorporated NEPL and sought Internal Revenue Service (IRS) recognition of NEPL as a tax-exempt foundation under Section 501(c)(3) of the Internal Revenue Code.[3]

In its application for tax-exempt status, NEPL asserted that it was formed "to educate members of the general public on American political systems and societal institutions." The application further stated that this education was to be accomplished through the study of the development of American political systems and the influence of such systems on societal institutions in the United States. NEPL indicated to the IRS that it would collect information on these topics, make that information available to the general public, and eventually conduct seminars.[4]

On December 12, 1984, the IRS issued a determination letter stating that, based on the information contained in NEPL's application and assuming that its operations would be consistent with the program outlined in the application, NEPL qualified as an exempt organization under Section 501(c)(3).[5]*

According to Channell, when he formed NEPL in late 1984, most "Washington insiders" doubted that anyone could raise money to advance foreign policy. Channell, however, believed that he could succeed because his major donors were committed to President Reagan and his philosophy toward foreign affairs.[6]

At first, NEPL concentrated on raising funds to publicize "European issues," e.g., SALT, summits, and nuclear freeze proposals. In January 1985, after NEPL ran a large newspaper advertisement congratulating President Reagan on his inauguration, Channell received a call from Edie Fraser of the public relations firm, Miner & Fraser. According to Channell, Fraser indicated that she admired the ad and asked for NEPL's assistance in organizing and promoting a fundraising dinner for the Nicaraguan Refugee Fund (NRF). This was Channell's introduction to the Contras' cause.[7]

To assist him, Channell recruited Daniel Conrad, a fundraising consultant from San Francisco, with whom Channell had dealt on earlier occasions. Conrad came to Washington, and together he and Channell initiated NEPL's involvement in the Nicaraguan issue.[8]

Daniel L. Conrad

Conrad, 44, received a bachelors degree in English and Political Science from Northwestern University in 1965. He also did graduate work in philosophy and business at Northwestern and the University of Michigan.[9] In the late 1960s, after short stints as a management trainee at Ford Motor Company and a fundraiser for Northwestern, Conrad joined Harvey Fundraising Management of Milwaukee, Wisconsin, as a field director for campaigns.[10]

In the early 1970s, after a brief career as a stockbroker, Conrad started his own firm, the Institute for Fundraising, in San Francisco. It was a sole proprietorship that presented seminars, produced manuals, and offered consulting services in the field of fundraising.[11]

In the late 1970s, Conrad incorporated his business as Public Management Institute (PMI), which evolved from a training and consulting services firm to one primarily engaged in the publishing of periodicals and reference materials on financial grants and capital campaigns. Conrad himself continued, however, to consult on fundraising matters.[12]

Conrad first met Channell in 1978 or 1979 at a seminar on fundraising being taught by Conrad in Alexandria, Virginia. After their initial meeting, Channell called Conrad periodically for informal advice on fundraising. In 1983 or 1984, Channell hired Conrad as a consultant to advise him on how to build a political consulting business, an assignment that lasted approximately 1 week.[13]

Given Channell's history of looking to Conrad for advice, it was natural for Channell to ask Conrad to assist him in fundraising for the Contras—even though Conrad had never been involved in political fundraising and had no particular interest in the Nicaraguan issue.[14] Their financial arrangement was never formalized. According to Conrad, Channell just gave him money periodically. For his efforts on the NRF dinner, for example, Conrad recalls receiving $10,000 or $15,000 from Channell, $10,000 from the NRF, and $1,500 from Miner & Fraser. After that time, Conrad's compensation "kept changing," with Channell deciding at various intervals how much to pay him. According to Conrad, he signed on with Channell's organizations more as a matter of friendship than as a matter of business.[15]

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*Channell formed additional entities between 1983 and 1986. The American Conservative Trust State Election Fund (ACT-SEF) was formed as a state PAC to take advantage of state laws allowing corporate contributions to such entities. "Sentinel" was formed in 1983 as a lobbying organization under Section 501(c)(4) of the tax code. The "American Conservative Foundation," a 501(c)(3) corporation also established in 1983, was intended to focus on issues that were "more worldwide in scope and interest" than NEPL. The "Anti-Terrorism American Committee" (ATAC) was formed in 1986 as a PAC focusing on "congressional attitudes toward terrorism and policies associated with terrorism." "Grow Washington" and "Hill Potomac" were corporations established to pursue specific initiatives that, according to Channell, never materialized. Those entities have therefore remained inactive and unfunded. In 1986, Channell assumed control of another conservative organization, Western Goals, which had been established by the late Representative Larry McDonald. Channell Dep., 9/1/87, at 62-66.

Although Conrad had no formal position or title, he served initially as the number two person in each of Channell's organizations. Channell eventually gave him the title, "Executive Director."[16]

When Conrad joined Channell, the common offices for Channell's various entities were in a small townhouse at 305 4th Street, NE, in Washington, D.C. Later, in August 1986, as money from Contra donors rolled in, they moved to luxurious and spacious new quarters in National Place, 1331 Pennsylvania Avenue, NW, Washington, D.C., and hired additional staff and fundraisers.

Lines of authority in Channell's organization were informal. Fundraisers reported either to Conrad or Channell, who shared responsibility for training them. Channell, however, was generally in charge of preparing the script to be used for soliciting prospective donors.[17]

Richard R. Miller and IBC

Miller, 35, received a bachelors degree in 1976 from the University of Maryland. During parts of 1979 and 1980, he served as director of broadcast services for the Reagan campaign. William Casey, Director of the 1980 Presidential campaign, furloughed him when funds ran short but then rehired him. During the furlough, Miller formed Ram Communications, a short-lived public relations firm.[18]

After the 1980 election, Miller served on the transition team and then briefly as special assistant to the director of public affairs in the Department of Transportation. From February 1981 to February 1983, he was chief of news and public affairs for the Agency for International Development (AID). He was then promoted to public affairs director at AID, where he remained until 1984.[19]

Upon leaving AID, Miller established IBC as a sole proprietorship to engage in media relations, strategic planning for public affairs, political analysis, and executive branch liaison. In 1984, he began to work with Francis Gomez who recently had left his position as Deputy Assistant Secretary for Public Affairs in the State Department. Miller had first met Gomez in February 1982.[20]

Immediately upon leaving the State Department in February 1984, Gomez received a contract from the State Department to assist its newly formed Office of Public Diplomacy for Latin America and the Caribbean (S/LPD) with public relations advice and support. The original purchase order for the contract specified that Gomez was to write talking point papers on Central America, prepare speaker kits, identify and refute distortions and false allegations regarding U.S. policy, draft sample speeches, prepare op-ed pieces and feature articles, assist Central American refugees and exiles visiting Washington, arrange media events for them, and make them available for Congressional interviews.[21]

This contract was renewed with Gomez in May 1984 and then assumed by IBC in August or September 1984. Before it terminated in September 1986 after several renewals, Gomez and IBC received a total of $441,084 from the State Department.[22]*

By mid-1984, with the assumption of the State Department contract, IBC was functioning as an informal partnership between Miller and Gomez, even though Gomez was technically a subcontractor to IBC. At a later time, Miller and Gomez would each establish personal corporations—Miller Communications, Inc. and Gomez International, Inc.—and, effective January 1, 1986, would restructure IBC into a partnership of those two entities. There is not, however, any written partnership agreement.[23]**

In September 1984, IBC also began to represent one of Adolfo Calero's organizations, the Nicaraguan Development Council (NDC). Initially, IBC charged NDC $3,000 a month for public relations services, a fee that was later raised to $5,000 a month when IBC hired a full-time employee to do work for NDC. This relationship gave Miller and Gomez significant opportunities to work closely with Calero, Alfonso Robelo, and Arturo Cruz.[24]

In the course of assisting the Contras with their public relations, Miller was introduced to North, apparently by either Otto Reich or Jonathan Miller (no relation)—Director and Deputy Director of S/LPD—who were IBC's principal contacts at the State Department.[25] In early 1985, Richard Miller became involved with the NRF dinner, with which Channell and Conrad were also engaged. This was the beginning of their relationship, although the dinner demanded little of their respective energies and was organized and run principally by others.

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*In Audit Report No. 7PP-008, July 1987, the State Department's Office of Inspector General filed its conclusions reached after a special inquiry into the awarding and supervision of these contracts with Gomez and IBC. That report concluded, in summary, that, while the original contract was justifiable, its utility became questionable during its later stages. The Inspector General also criticized the sole-source, noncompetitive process for awarding and administering the contracts, especially the classification of one version of the contracts as "SECRET," indicating that the classification was unjustified and improper. Audit Report at 32-33.

**In July 1986, IBC entered into a joint venture with David C. Fischer & Associates, a consulting firm founded by a former aide to President Reagan. R. Miller Dep., 8/20/87, at 93-95.

The NRF Dinner

According to Channell, the NRF dinner had to be postponed several times and was an organizational disaster. When it finally took place on April 15, 1985, President Reagan attended and delivered the keynote address. The NRF dinner proved to Channell that large and expensive functions were not an efficient method of raising money for the Contras, but the President's commitment to the Contra cause convinced Channell that the Nicaraguan issue was fertile ground for fundraising and public education.[26]

Thereafter, Channell and Conrad, with the assistance of Miller, concentrated on private meetings with potential large donors, who would be given an audience with North and, in some cases, a photo opportunity with the President.

The idea of focusing on potential big givers to the Contras was not new. Edie Fraser, one of the principal organizers of the NRF dinner, testified that at the suggestion of the State Department she met with North on December 11, 1984, to seek White House "participation" in the dinner. At that meeting, Fraser mentioned the Sultan of Brunei to North as a possible contributor to the NRF. Fraser explained that the Sultan had come to her attention because he had made a contribution to UNICEF in honor of Mrs. Reagan. On December 28, 1984, Fraser sent further biographical information on the Sultan to North, but does not know if North ever followed this lead.[27]

On March 4, 1985, Fraser sent additional information to North on the planned dinner. At the bottom of the cover letter she added a handwritten note: "Ollie, Very Imp., Two people want to give major contribs i.e. 300,000 and up if they might have one 'quiet' minute with the President."[28]

According to Fraser, she added this note to the letter because of her conversations with Channell and Conrad, who suggested that some of their contributors might make large donations to the NRF dinner if they could meet alone with President Reagan. As far as Fraser can recall, she added the number of donors ("two") and the possible amount of money ("300,000") to her note to give the offer some definition. She cannot be sure that either Channell or Conrad were that specific in their conversations with her.[29] Neither Channell nor Conrad recall discussing such an offer with Fraser.[30]

Fraser received no response from North regarding the offer. In fact, Fraser says she never heard from or spoke to North again after their initial meeting on December 11, 1984. Her letters were not answered by North; someone else at the White House ultimately assumed responsibility for liaison with the group planning the dinner.[31]

NEPL and IBC Meet

In late March 1985, prior to the NRF dinner, Channell called the office of Edward Rollins, then White House Political Affairs Director, to ask how NEPL could help support "the President's agenda in Central America." Rollins's office referred the call to John Roberts, then a White House aide, who agreed to have lunch with Channell and Conrad.[32]

At that lunch, according to Channell, Roberts responded to their interest in the Nicaraguan issue by stating that they should talk to Miller and Gomez, the principals of IBC. Roberts told Channell and Conrad that IBC was "the White House outside the White House" on this issue. Shortly thereafter, Channell and Conrad set up a meeting with Miller.[33]*

Roberts had called Miller prior to that meeting and alerted him to the referral, suggesting that Channell and Conrad wanted to "help the President" on Nicaragua. In particular, Roberts told Miller that Channell and Conrad wanted to do a media campaign. Roberts did not mention any possibility of direct financial assistance to the Contras.[34]

Channell-Miller Network—The Beginnings

In late March or early April 1985, Channell, Conrad, Miller, and to a significantly lesser degree, Gomez, embarked on an effort to assist the cause of the Contras. Their joint efforts would extend into the latter portion of 1986. According to Miller, Channell initially offered to IBC a retainer of $15,000 per month, which IBC accepted.[35]

In exchange for this retainer, IBC was to handle media relations, political analysis, research, advertising copy, film production, and other public relations functions. There was never any written agreement, however, reflecting the arrangement between NEPL and IBC.[36]

At first, IBC lent support to the American Conservative Trust and NEPL in their efforts to educate the public on the Nicaraguan issue. Very quickly, however, Channell expressed to Miller an interest in raising money for the Contras. Because of their prior contact with the Contras' organization and leaders, Miller and Gomez believed that they could be of assistance. One of Channell's first steps, with IBC help, was to secure a letter from Adolfo Calero authorizing NEPL to solicit contributions on behalf of his organizations.[37] This letter, dated April 10, 1985, opened "Dear Spitz," and read in part:

> Please help us to achieve our dream, a free and democratic Nicaragua, not tied to a hostile Soviet threat but to a peaceful democratic American tradition.

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*With respect to this conversation, Roberts told the Committees in an interview that he possibly described Miller as "fronting for the State Department" or as "in the family." Roberts Int., 7/17/87.

> All resources you can raise will be appreciated. We can put all of them to good purposes.
>
> Richard Miller and Frank Gomez can keep you informed of our progress and serve as our contact point in the United States.[38]

The Initial Solicitations

In early April 1985, Channell spoke with one of his prior contributors, John Ramsey of Wichita Falls, Texas, who Channell felt might be interested in contributing to support the Contras. Ramsey seemed receptive to the idea, but wanted to meet Calero in person to ensure that any money he contributed would, in fact, be used to support the Contras.[39]

Channell scheduled a dinner for himself, Conrad, Miller, Gomez, Ramsey, and Calero in Washington, D.C., on April 10, 1985. At the last minute, however, Calero was unable to attend and the dinner went forward without him. Going into the dinner, Channell had told Miller and Gomez that Ramsey was a "tough cookie" who probably would be most interested in the Contras' need for arms and other lethal supplies.[40]

At the dinner, in a private room at the Hay-Adams Hotel, Miller and Gomez spoke at length about the Contras' need for supplies, both lethal and non-lethal. Gomez showed Ramsey a book of photographs taken during a recent trip Gomez had made to various Contra bases in Central America. This collection included pictures of Contra fighters, mortars, and machine guns.[41]

Conrad openly tape-recorded the conversation during dinner, supposedly because he was learning new information about the Contras and wanted to preserve it.[42] The transcript of the tape, as further interpreted by Channell, Conrad, and Miller during depositions, confirms that Channell, Miller, and Gomez discussed the Contras' military and non-military needs at length, often in response to questions from Ramsey. At one point, Miller deflected a suggestion by Ramsey that people be solicited to send used shotguns to the Contras:

> RAMSEY: "The best I can tell, a shotgun is the best thing to use in jungle warfare."
>
> GOMEZ(?): "Or a very rapid fire machine gun. That's why the AK-47s and the M16s are the best weapons."
>
> MILLER: "The M16 fires a 22.5 caliber bullet."
>
> RAMSEY: "I bet I could get 10,000 people to give their old shotguns to this."
>
> MILLER: "Only one problem. You can't export guns without a license."[43]

Shortly after this exchange, the subject turned to methods of counteracting Soviet-supplied HIND helicopters:

> GOMEZ or MILLER: "Calero has said publicly, so that the Sandinistas could hear on secret radio communications in the field saying we have red eyes [missiles]. It's a big lie."
>
> UNKNOWN: "They're playing a psychological war against the Sandinistas."
>
> MILLER(?): "The more sophisticated of the shoulder-held missiles, the red eyes. There's 2 different kinds. One that's a little less expensive and there's one that's $8,000. It can take it out."[44]

Later, Channell itemized some of Calero's needs:

> CHANNELL: "Calero wants those red eye missiles. He wants boots. He wants back packs. He wants AK-47 rounds which you can get on the international market. He wants communications equipment."[45]

Ramsey, however, returned again to his suggestion to provide the Contras with donated arms, which is not what Channell and Miller had in mind:

> RAMSEY: "We're going to call it the Shotgun Drive. And we're going to get Remington to put up the amo [sic]. Dupont owns Remington.
>
> "We're going to start on CBs. We're not even going to invoke the electronic media until we get support or we have about three semis going north on Tobacco Road out of North Carolina full.
>
> "And they keep calling on another semi.
>
> "We got an empty semi out there? Somebody got an 18-wheeler empty can come down and help liberate Central America?"[46]

Near the end of the transcript, the Channell-Miller group succeeded in turning the discussion back to missiles and money:

> UNKNOWN: "Between now and May 1 the red eye missiles could be the entire key.
>
> "Because if they succeed at this point in launching an offensive including tanks and MI24 helicopters into that region and go for the cans . . . .
>
> "There's two different kinds of red eye missiles. There's one that's very unsophisticated which is just a direct shot missile. And then there's one that's able to take on the Hind [sic] because the Hind has major decoy devices, has heavy arma-

> ment, and it has these flares on the back of the exhaust from the jets—the expulsion from the engine—that mask the heat.
>
> "So you have to have the $8,000 red eye to make it work."[47]

The transcript concludes with an observation, attributed to Miller, summing up well the philosophy with which Channell, Conrad, and Miller approached their solicitations:

> MILLER: "If you provide money for ammunition, the money they've set aside for ammunition can go to boots.
>
> "On the other hand, if you provide money for boots, what they've set aside for boots can go to ammunition."[48]

The solicitation was a success. The next morning Ramsey had breakfast with Calero and, at that time or shortly thereafter, donated $20,000 directly to the Nicaraguan Development Council. As noted earlier, the NDC had previously retained IBC as a public relations consultant.*

Later, in early June 1985, Miller received a telephone call from North, who asked him to try to raise $30,000 for an undisclosed purpose related to the Contras. North also gave Miller the name and number of a Robelo-controlled account in the United States—although Miller did not know that—into which any contribution could be deposited.[49]

At Channell's suggestion, Miller contacted Ramsey, who sent $10,000 directly to the Robelo-controlled account.[50] North later confirmed to Miller that the contribution had been received.[51]

Channell then asked Miller to have North send telegrams of appreciation to both Ramsey and Channell. Miller got North's approval for these telegrams and sent them over North's name.[52] In those June 6, 1985 telegrams, North thanked Ramsey and Channell for their support.[53]

The Ramsey solicitation was not, however, to become the model. It did not produce enough money for the effort and the donation was sent directly to Robelo so that the Channell-Miller group was not compensated. A new approach was undertaken.

North's Maiden Presentation

After the Ramsey solicitation, Channell drew on his experience with NCPAC briefings, and worked with Miller to sponsor a White House "event" for prior and potential NEPL contributors. This event was intended to educate contributors about the situation in Nicaragua and to solicit funds for the Contras. Through North, Miller and other IBC associates were successful in arranging a White House briefing for a group invited by NEPL.[54]

The briefing was held on June 27, 1985, in the Old Executive Office Building next to the White House with North as the principal speaker. According to Channell, North delivered what became his standard speech about Nicaragua and the Contras. North showed slides during his presentation, some of which had been provided by IBC.[55]

North's speech was an impassioned plea. He discussed the Communist threat posed to Nicaragua's neighbors by the Soviet and Libyan military buildup in Nicaragua, the political and religious repression in Nicaragua, the humanitarian and military needs of the Contras, and the importance of United States support for the Contras. North also emphasized that the United States would be flooded with millions of refugees if Nicaragua continued under its existing regime and policies.* This briefing was the initial substantive encounter between Channell and North.**[56]

After the briefing, the potential donor group was taken across the street for a reception and dinner at the Hay-Adams Hotel. As was to become customary, NEPL arranged and paid for food and lodging at the Hay-Adams for persons attending this special White House briefing. At the dinner, Channell presented Calero with a check for $50,000, which represented all Contra-related contributions received to date by NEPL. At Miller's instruction, the check was made payable to a Calero account.[57]

Channell testified that his understanding was that the contributed funds would be used for humanitarian supplies. This understanding was based on Calero's specific appeal that night for medicine and food.[58]

The Establishment of I.C., Inc.

Meanwhile, in March or April 1985, North was contacted by Kevin Kattke—whom North described to Miller as an "intelligence community gadfly"—about an alleged Saudi Prince who proposed donating to the Contras $14 million of profits derived from the sale of Saudi oil.*** North referred the Prince—who used a variety of pseudonyms, the most common of which was Ebrahim al-Masoudi—to Miller, who was engaged to market the Prince's oil. Miller and the Prince met several times over the course of the next several months. Miller's interest was twofold: he and North wanted to raise money for the Contras, and he was to receive $1 million of the profit that would be derived from the sale of the oil.[59]

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*When Ramsey was shown a copy of the dinner transcript, he indicated that, while portions of the dialogue seemed familiar, "[t]here is very much on there I have never heard of before." Ramsey Dep. at 70. Ramsey suggested that Channell, Conrad, Miller, and Gomez "might not have ask[ed] for the money [for lethal supplies] directly." Instead, "[t]hey were just saying that if the [Contras] had the money they could buy them." Ramsey Dep. at 87.

*North presented a version of his slide presentation during the public hearings. North Test, *Hearings*, 100–7, Part II, at 142-46.

**Some donors who contributed money to Calero through NEPL had received expressions of appreciation from North prior to the June 27 briefing. E.g., RM 3577. These communications were apparently arranged by Miller at Channell's request. R. Miller Dep., 6/23/87, at 27.

***The Prince eventually was determined to be a fraud, and now is imprisoned for a separate swindle involving a Philadelphia bank.

Miller kept North fully apprised of his dealings with the Prince, which eventually also included a prospective gold transaction and assistance in freeing the hostages held in Lebanon.[60] Indeed, Miller believed that he "was an agent working on [North's] behalf" in connection with these and other activities undertaken at North's request.[61] *

On April 26, 1985, Miller and Gomez incorporated a Cayman Islands corporation known as I.C., Inc.[62] This entity originally was intended to receive the profits from the transactions conducted with the Prince. Gomez was included because Miller needed a second corporate director under Cayman Islands law and Gomez was a close business associate on whom Miller could rely.[63]

The Cayman Islands were chosen by Miller on the recommendation of a "political friend." Miller wished to keep "offshore" any money that he derived from his transactions with the Prince, because: (1) he did not want to incur federal income tax on these proceeds; and (2) he and North "took precautions all the time . . . not to have organizations be readily available for public view." Miller was told that it was cheaper to maintain bank accounts in the Cayman Islands than in Switzerland. He also received advice from an attorney that such an offshore "collection point" was a lawful arrangement.[64]

Although no proceeds were derived from the venture with the Prince,** I.C., Inc. became an integral part of the Channell-Miller fundraising network for the Contras. It served as a conduit, protected by Cayman Islands bank secrecy laws, through which the funds contributed to the tax-exempt NEPL could be transferred to the Contras or to the Enterprise.

Miller advised North in late April or early May 1985 of the actual formation of I.C., Inc.[65] Indeed, North testified that he directed Miller to establish this Cayman Islands corporation to be used for Contra funding efforts.[66] In May 1986, Miller changed the name of I.C., Inc. to "Intel Co-Operation, Inc.," and amended the corporate charter to specify that the company was engaged, among other things, in providing grants to "political and benevolent" organizations.[67] At that time, Miller told North about this name change and charter amendment, which Miller asserts was not aimed at providing increased cover for the operation.[68]

The Creation of the Network

Soon after the June 1985 briefing, Channell asked Miller to arrange a meeting with North. Certain contributors to NEPL were concerned about press reports suggesting that contributions for the Contras were being skimmed or spent on unnecessary or obsolete items.[69] In addition, Channell wished to express his appreciation to North for the June 27 briefing.[70]

Miller ultimately arranged a meeting on July 9 for himself, North, Channell, and Conrad at the Grill Room in the Hay-Adams Hotel. At the meeting, Channell asked North how best to ensure that funds contributed to NEPL for the benefit of the Contras actually were used for that purpose. North told Channell that henceforth "continued" contributions to NEPL for the Contras should be passed to IBC for proper dispersal. From shortly after this meeting through the fall of 1986, NEPL made all Contra assistance payments to IBC or to I.C., Inc.[71]

North had shown a flow chart to his deputy, Robert Earl, and Miller sometime in 1985, which showed NEPL, IBC, and I.C., Inc. as vital parts of an elaborate Contra funding network. While this chart turned out not to be a fully accurate depiction of the actual workings of the network, North used it with Miller to explain "how a covert operation is set up." Miller recalls that the chart was similar to (although not as complete as) a chart found in North's safe and reproduced in the Tower Review Board Report at C-17.[72]

Channell-Miller Network—The Operation

White House Briefings and Hay-Adams Gatherings

The North briefing in June 1985 served as the blueprint for other similar briefings during the next year for NEPL contributors or potential contributors. These group briefings occurred on October 17, 1985, November 21, 1985, January 30, 1986, and March 27, 1986.

The White House briefings were meticulously planned by NEPL, IBC, North, and White House personnel. Internal White House memorandums obtained by the Committees show that North was the switching point for arranging and coordinating the briefings with White House liaison, White House Counsel, and White House security.

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*For a more detailed account of the Prince's activities in connection with operations and persons under investigation by the Committees, see Chapter 5.

**According to Miller, he spent approximately $370,000 on activities involving the Prince. North was aware of and approved these expenditures. Miller did not incur monetary loss, however, because North authorized Miller to reimburse himself for these expenditures from Contra assistance funds transferred to IBC from NEPL. R. Miller Dep., 8/21/87, at 404-07.

NEPL prepared and sent invitations to persons selected by Channell and his associates. A typical invitation to a briefing stated in pertinent part:

> You are one of a small group of dedicated Americans who has stood by President Reagan . . . in support of his agenda. . . . It will be a pleasure to meet you in Washington on [date] when you attend our special security briefing followed by a working dinner. . . . Please be reminded that your accommodations at the Hay-Adams Hotel are taken care of and there is no expense to you.[73]

For those who attended, NEPL met them at the airport with a limousine and escorted them to the Hay-Adams Hotel, where all expenses were paid by NEPL.

The group typically was taken from the Hay-Adams to a reception room in the Old Executive Office Building, where they were introduced to North and other White House personnel. Other than North, among those who participated in these briefings were Patrick Buchanan, White House Communications Director; Mitch Daniels, Political Assistant to the President; Linas Kojelis, Special Assistant to the President for Public Liaison; Linda Chavez, Deputy Assistant to the President and Director of the Office of Public Liaison; and Elliott Abrams, Assistant Secretary of State for Inter-American Affairs. For the January 30 briefing, David Fischer—a former Special Assistant to the President who became a highly paid consultant to NEPL and IBC—even arranged for a Presidential "drop-by."

North always delivered the principal speech and slide presentation along the lines of the June 1985 briefing. While he was an effective speaker, North generally was careful not to ask for money, often telling the audience that he could not solicit funds because he was a Federal employee. He did, however, suggest that persons interested in contributing funds for the Contras should speak with Channell. At least one attendee at these briefings recalled North's stating that there were certain matters he could not discuss with them "on this side of Pennsylvania Avenue" but that Channell would raise later "on the other side of the street," a reference to the Hay-Adams Hotel.[74]

An account of North's presentation was provided at the public hearings by an eventual contributor in attendance at the March 1986 briefing, William O'Boyle:

> [North] described the military and political situation in Nicaragua. He had photographs of an airport in Nicaragua that had been recently built; the purpose of the airport was ostensibly commercial, but it was in fact a disguised military airport. One of the uses for which the airport was intended was to recover the Russian Backfire bombers after they made a nuclear attack on the United States.
>
> Another possible use of this airport was to fly a certain kind of mission that was currently being flown out of Cuba, up and down the east coast of the United States. Apparently every day a Russian plane leaves Cuba, as I recall, and goes right up the 12-mile limit, has some kind of large device on the outside of the plane. . . . This Nicaraguan air base would allow the Russians to fly the same kind of mission up the west coast to the United States. . . .
>
> He described the refugee problem . . . and we could look forward in the next few years to millions of refugees flooding across our borders as this happened. . . .
>
> He showed photographs which indicated that the Nicaraguan government officials were indicated in smuggling dope. . . . He also told an anecdote about some Nicaraguan agents that were recently caught with dope and money and so forth and disguised as American agents.[75]

O'Boyle indicated also that North furnished him with classified information designed to show that the Soviets were managing the diplomacy of the Nicaraguans before the United Nations.[76]

After the briefings, Channell, Miller, and their associates hosted a cocktail party and dinner at the Hay-Adams, often attended by Contra leaders and some U.S. Government officials. During the reception and dinner, NEPL and IBC employees attempted to determine which attendees were the most likely contributors. The enticement of purchasing lethal supplies for the Contras was often used with potential contributors. Those persons who expressed a serious interest in contributing money for the Contras were offered the opportunity to meet one-on-one with North, and, if they gave enough, a meeting with the President.[77] Large contributors to NEPL uniformly received thank you letters from North (and often from the President) for their support of the President's policies in Central America, although without specific reference to any contribution.[78]

North's Involvement in Solicitations Intended for the Purchase of Lethal Supplies

In his public testimony, North testified that "I do not recall ever asking a single, solitary American citizen for money."[79] He readily admitted, however, that "I showed a lot of munitions lists" to Contra contributors or potential contributors "in response to questions about the cost of lethal items."[80] The Committees received evidence on North's activities that shed light on these statements.

1. "Big Ticket Items" and "Ollie's New Purchase" Lists. In the late fall or early winter of 1985, Channell asked Miller to have North prepare and provide a list of "big ticket items" to be used in soliciting contributions for the Contras. At Miller's request, North recited a list that included heavy lifting of cargo by aircraft (approximately $675,000 worth); training and outfitting of an "urban tactics unit"; the resupply of a Contra fighting unit known as the "Larry McDonald Brigade" (a Contra unit); and probably missiles of some kind.[81]

Miller typed the list onto his computer, printed a single copy, gave that copy to Channell, and deleted the computer entry. Channell used this list, which totalled approximately $1.2 million, to solicit contributions.[82] An apparently different "big ticket items" list was prepared by North and used by him and Channell in a solicitation of Nelson Bunker Hunt. Handwritten notes produced by Miller indicate other conversations with North about fundraising for lethal supplies. A note dated September 18, 1985, contains entries reading "$415,000-Weapons, C4, M79" and "520,000 MAUL."[83] "C4" refers to an explosive, "M79" likely refers to a grenade launcher, and "$520,000 MAUL" refers to the cost of eight Maule airplanes. Miller testified that North provided this information to him with the understanding that it would be used for fundraising.[84]

Another handwritten note of Miller's contains the entry "Ollie's new purchase list." The note is dated February 5, 1986.[85] Miller does not recall the derivation of this entry.[86]

2. North's Special Appeals. As North testified publicly, he met with scores of potential contributors to convey the plight and needs of the Contras. Insofar as North's actual role, the more revealing of these meetings are those that were conducted in private. As the descriptions below indicate, North prepared potential large contributors for what Conrad termed "the call to the altar." [87]

a. Nelson Bunker Hunt—In September 1985, Channell arranged a meeting in Dallas between North and Nelson Bunker Hunt, a wealthy Texas businessman who had contributed $10,000 to NEPL the previous July. Channell rented a private airplane for $8,000 to $9,000 to transport North to and from Dallas.[88] * The trip was worth the cost.

In Dallas, there was a private dinner at the Petroleum Club attended by Hunt, Conrad, Channell, and North. North gave his standard briefing, without slides, and showed Hunt a list of various Contra needs. The list was divided about evenly between lethal and non-lethal items, and included Maule aircraft and a grenade launcher possibly described as an "M-79." The total price was about $5 million. According to Channell, after discussing the items on the list and their prices, North "made the statement that he could not ask for funds himself, but contributions could be made to NEPL, or words . . . to that effect." North then left the room, a maneuver that had been "pre-arranged."[89]

Channell explained that the list was his idea because he wanted a "fundraising objective" to take to Hunt. He therefore had asked North to prepare a list totalling about $5 million for use in the solicitation of Hunt.[90]

Despite this evidence, Hunt has told the Committees that Channell never spoke to him about the Contras' need for weapons. According to Hunt, Channell told him that the Contras had "unpaid bills" for "[f]ood and shelter, medicine, [and] general expenses. . . ." [91] Hunt testified that he does not recall any conversation he had with North at the dinner.[92]

Nonetheless, as a result of this dinner, Hunt made two payments to NEPL of $237,500 each.[93] One of them was a contribution and one was a loan. The loan was evidenced by an unsigned promissory note because Channell would not agree to the loan (especially after he was unable to find a contributor to guarantee the loan on NEPL's behalf). Nevertheless, he held the $237,500 principal for 4 months, repaying it to Hunt in January 1986 without interest.[94] Hunt subsequently paid $237,000 to NEPL in March 1986 as a contribution, making his total contributions to NEPL $484,500.[95]

In the case of Hunt's initial $10,000 contribution in 1985, he sent NEPL a personal check drawn pursuant to a "check request" and marked "contribution." He also itemized the $10,000 contribution as a charitable deduction on his 1985 tax returns. By contrast, each step in the later transactions was conducted with Hunt's law firm—Shank, Irwin & Conant (SI&C) of Dallas, Texas—acting as an intermediary, and issuing its own checks, backed by Hunt's funds.[96]

Hunt testified that he handled these transactions in this manner in an effort to avoid publicity in the "liberal media" over the contributions. He acknowledged that the NEPL gifts were the only ones he had ever made indirectly. Moreover, none of the check requests or check stubs for the three large checks has any entry in the section designated for "purpose." Documentation for other checks produced by Hunt consistently included this entry. Hunt indicated that he must have overlooked this omission on the three checks in question.[97]

Finally, Hunt did not itemize the $237,500 contribution on his 1985 tax return or the $237,000 contribution on his 1986 return. He explained that, because of large losses each year, he did not need the deductions. Nonetheless, numerous other contributions apparently were itemized by Hunt on those tax returns.[98]

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* This was the first time North used an airplane supplied by NEPL; on one other occasion, NEPL chartered a plane to fly North and his family for a weekend visit to Barbara Newington's house in Connecticut. Channell Dep., 9/1/87, at 148.

In short, it seems that Hunt took great pains to keep his large contributions to NEPL "off the books." As indicated above, a note made by Miller 1 day after Hunt issued the checks for the contribution and loan to NEPL contains the entries "$415,000—Weapons C4, M79" and "$520,000 MAUL," referring to munitions and airplanes.[99] This same note refers expressly to Hunt in a different context.[100]

b. Barbara Newington—Barbara Newington, a wealthy widow from Greenwich, Connecticut, had been a large contributor to Channell organizations (and at least one predecessor organization) for a few years. In 1985 and 1986, Newington contributed a total of $2,866,025 to NEPL. On June 25 or 26, 1985, she met privately with North because she was unable to attend the Channell group meeting arranged for the next day. She also met privately with President Reagan on two occasions.[101]

In early November 1985, North, Miller, and Channell participated in a solicitation of significant contributions from Newington. Miller's handwritten notes leading up to the meeting indicate that Channell prepared a proposed "pitch" for "Green"—the code name for North used by NEPL and IBC—to use with Newington. This "pitch" included statements such as "[you are] the most secure person we know in the U.S." and "[w]e are asking you to take on a project that requires your kind of person."[102] Although Miller does not specifically recall, he might have relayed a somewhat softened version of this solicitation to North.[103]

In further preparation for the solicitation, Miller created a file folder that contained an unclassified photograph of a Soviet HIND helicopter on one side of the folder and a picture of a shoulder-held surface-to-air missile on the other side. He also included an article from The New York Times on the capabilities of the HIND helicopter.[104]

The critical meeting took place in Newington's suite at the Hay-Adams Hotel where Channell, Miller, and Newington were joined by North. At the meeting, North referred to the file folder prepared by Miller, placed The New York Times article in front of Newington, and described the capability of the pictured surface-to-air missile to counteract HIND helicopters. In response to a question from Newington, North indicated that he knew where to obtain such missiles, although Miller cannot recall whether North quoted any prices. North left the room shortly thereafter. According to Miller, North's absence was not specifically prearranged, "but it was his practice not to be in the presence of the donor when they were asked for money."[105]

Channell then solicited Newington for a substantial amount of money. Over the course of the next 4 to 6 weeks, Newington made stock contributions to NEPL worth approximately $1.1 million.[106] Like Hunt, Newington has denied that she ever made a contribution intended for the purchase of lethal supplies.[107]*

At some point in the spring of 1986, Channell and Newington decided to invite North and his family to Newington's house for a weekend of recreation and relaxation. Miller, North, and North's family travelled to Connecticut in a private plane chartered by Channell. It is unclear whether there was any discussion of Contra assistance that weekend.[108]

c. William O'Boyle—William O'Boyle testified that he received several fundraising calls from NEPL in early 1986. O'Boyle, an independently wealthy businessman from New York City, had been referred to NEPL by a friend from Texas.[109]

In late March, he was invited by mailgram to a private White House briefing on Nicaragua. He flew to Washington on March 27, was met at the airport by a limousine arranged by NEPL, and was delivered to the Hay-Adams Hotel, where he met Channell, Miller, and others. Channell escorted the group to a meeting room in the Old Executive Office Building, where North presented the briefing described above.[110]

After the briefing, the participants returned to the Hay-Adams for a cocktail reception and dinner attended by Channell, Miller, and other NEPL and IBC personnel. During the reception, O'Boyle indicated to a NEPL employee, either Cliff Smith or Krishna Littledale, that he was interested in making a contribution to purchase weapons for the Contras. He wanted to know what weapons were needed and how much they cost. The NEPL employee with whom O'Boyle spoke told him later that a Blowpipe antiaircraft missile could be purchased for $20,000.[111]

After dinner, Channell told O'Boyle that there was a small, select group of persons in the United States who contributed money for lethal supplies to carry out the President's policy in support of the Contras. Channell asked O'Boyle if he would meet with North at breakfast the next morning. O'Boyle agreed.[112]

Breakfast took place in the main dining room of the hotel. Before North arrived, the conversation between O'Boyle and Channell continued in the same vein as the evening before. Channell told O'Boyle that they had him "checked out" overnight to ensure that he (O'Boyle) was reputable enough to join the select group of Americans Channell had mentioned.[113]

When North arrived, Channell told him that O'Boyle was willing to contribute funds for the purchase of weapons. North immediately began to describe from a notebook the Contras' needs, including several million rounds of "NATO" ammunition, Eastern bloc ammunition, Blowpipe and Stinger antiaircraft missiles, and Maule aircraft. North explained that Blowpipe missiles cost $20,000 each, but that they had to be purchased in packs of 10. He also mentioned that the cost of Maule airplanes was $65,000 each. According to O'Boyle, North stated that "he could not ask for money himself as a government employee."[114]

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*Miller later heard from Calero that no missiles had been received by the Contras. North told Miller that the Newington money had been used to purchase "secure radios." R. Miller Dep., 8/20/87, at 237.

Either at this breakfast or the evening before, Channell informed O'Boyle that if he contributed $300,000 or more, a 15-minute "off-the-record" meeting would be arranged between O'Boyle and President Reagan. Channell indicated that other people who had contributed that amount of money had met with the President. O'Boyle understood that these meetings with the President were "off-the-record" because the subject matter was so secret and sensitive.[115]

O'Boyle told Channell that he wanted time to consider whether to make a contribution. After returning to his home in New York for a few days, O'Boyle decided to contribute $130,000 to NEPL for the purchase of two Maule airplanes.* He flew to Washington to deliver his check to NEPL headquarters and was taken to the Hay-Adams Hotel by a NEPL employee. Channell met O'Boyle at the hotel. O'Boyle then gave his check to Channell, who telephoned North to join them at the hotel.[116]

When North arrived, Channell showed him O'Boyle's check, which North acknowledged. North spoke to O'Boyle again of the Contras' military needs and corresponding costs, but indicated that Blowpipe missiles no longer were available. In North's presence, Channell again told O'Boyle that a larger contribution would warrant a meeting with the President and asked for more money.[117]

Despite a visit in New York from Channell and Conrad and another meeting with North in Washington in which North disclosed a purported "secret" plan as to how the Contras would prevail in Nicaragua, O'Boyle informed Channell that he did not wish to make further contributions to NEPL.** In any event, in response to a subsequent mailing from NEPL, O'Boyle made one more contribution for $30,000.[118]

d. Ellen Clayton Garwood—Ellen Garwood also testified at the Committees' public hearings. She had been a NEPL contributor on several occasions. She is a wealthy octogenarian widow from a well-known family in Austin, Texas. Garwood first met North in 1984 at a Council for National Policy meeting. She had been briefed privately by him on the Contras' needs at least a handful of times, including once at a small airport in Dallas when North flew there to solicit Hunt in September 1985.[119]

Garwood travelled to Washington in April 1986 to attend meetings of NEPL contributors. Prior to the trip, Channell told Garwood that she would be presented with an appeal for much more money than had been requested of her before.[120]

During the last day of the NEPL meetings, Channell asked Garwood to meet with him and North that evening in the hotel lounge. At the evening meeting, North told Garwood that the situation of the Contras was desperate. With tears in his eyes, North explained to her that the Contras were hungry, poorly clothed, and in need of lethal supplies. He emphasized that the Contra forces might not exist by the time the Congress renewed Contra aid.[121]

Either North or Channell then produced a small piece of paper with a handwritten list on it. They discussed the list in hushed tones outside of Garwood's hearing. After North left the lounge, Channell showed the paper to Garwood. The paper contained a list of weapons and ammunition, with a price opposite each category of items. She recalls that the list included hand grenades, antiaircraft missiles, bullets, cartridge belts, and other items.[122]

Channell told Garwood that the items were what the Contras needed to sustain their efforts and requested her to provide the amount necessary to purchase the listed lethal supplies. Channell transcribed a copy of the list for Garwood to take with her.[123]

To supply the items on the list, Garwood immediately contributed more than $1.6 million to NEPL; she wired $470,000 in cash and transferred stock valued at $1,163,506. For this same purpose, she contributed an additional $350,000 the next month. All told, she contributed $2,518,135 in 1986. Garwood stated unequivocally that the principal purpose of these April and May 1986 contributions was to purchase for the Contras the weapons and ammunition on the list provided by North and Channell.[124]

* * * * *

These descriptions of the Hunt, Newington, O'Boyle, and Garwood solicitations are not exhaustive. The Committees interviewed or deposed 13 of NEPL's significant contributors during the relevant time period, nearly all of whom reported personal contact with North. The Committees have received evidence that several of these contributors—including John Ramsey of Wichita Falls, Texas, and C. Thomas Claggett, Jr., of Washington, D.C.—made donations intended for the purchase of lethal supplies. Channell's records reveal that 12 contributors, including Newington and Garwood, accounted for slightly more than 90 percent of NEPL's contributions in 1985 and 1986.

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*The Committees have concluded from Enterprise records that O'Boyle's contribution was used for general Contra support, not for the purchase of two Maule aircraft.

**At the meeting in New York, O'Boyle expressed to Channell some concerns about the legality of using tax deductible contributions for weapons. According to O'Boyle, Channell told him that a lawyer had advised favorably on the question of legality, but that in any event the money could not be traced because contributions were being passed through a for-profit corporation and overseas. O'Boyle Dep. at 91.

By giving to the tax-exempt NEPL, the contributors were able to claim tax deductions even though their contributions were intended for the purchase of lethal supplies. The Committees have received evidence that several of these contributors claimed tax deductions for their NEPL contributions. For taxpayers in the 50 percent tax bracket, this meant that the public in effect paid for half their gifts.

The Role of the President

In a May 19, 1986, PROF note to Poindexter, North wrote "the President obviously knows why he has been meeting with several select people to thank them for their 'support for Democracy' in Cent[ral] Am[erica]."[125] In fact, what the President knew is a matter of some doubt.

The President, in his March 19, 1987, press conference said that he believed that contributors he met had donated money for political advertising for the Contras.[126] The minutes of the May 16, 1986, National Security Planning Group (NSPG) meeting reveal the same understanding on the part of the President. He stated, "What about the private groups who pay for ads for the Contras? Have they been contacted? Could they do more than ads?" [127] Similarly, in preparation for the January 30 briefing, Linda Chavez wrote a memorandum to the President, stating that "ACT and NEPL spent in excess of $3 million supporting the President's programs through public awareness using television and newspaper messages." [128] In fact, much of the $3 million was directed toward Contra support activities, including arms.

Poindexter, however, testified at his deposition that "[t]here wasn't any question in my mind" that the President was aware that the contributors he was thanking were giving to the Contras [129] He added that "in the White House during this period of time that we were encouraging private support, we really didn't distinguish between how the money was going to be spent." [130] North testified that in writing his May 19 PROF note, he assumed that the President was aware that the contributions were for munitions, as well as other things, although he denied ever discussing this with the President.[131]

The President met with and thanked several large contributors for their support of his policies. David Fischer, former Special Assistant to the President, arranged Presidential photo opportunities or meetings with at least seven major Channell-Miller contributors in 1986. Fischer and Martin Artiano, a Washington lawyer, were paid steep fees by IBC (which charged these fees to NEPL) for arranging these meetings (among other services). Channell's statement to O'Boyle that these meetings carried a $300,000 price tag is substantiated by Edie Fraser's cryptic note to North (mentioned above); at least five of the six contributors who donated more than $300,000 to NEPL were invited to meet with the President.

The Role of David Fischer and Martin Artiano

In late November or early December 1985, Miller asked Martin Artiano, an acquaintance from the 1980 Reagan Presidential campaign, to help him find someone "who had some Washington experience at a relatively senior level" to provide "consulting" assistance to IBC on behalf of NEPL.[132] When Artiano learned of IBC's needs, he contacted David Fischer, who had been a friend since they worked together as advance men in the 1976 Reagan campaign.[133]

After the unsuccessful 1976 Reagan Presidential effort, Fischer worked as an employee of Deaver and Hannaford, a public relations firm that did extensive work for Mr. Reagan. Fischer was in charge of Mr. Reagan's advance operations and served on occasion as his personal aide during the years of preparation for another Presidential run in 1980.[134] During the 1980 campaign, Fischer became the full-time personal aide to Mr. Reagan, travelling on the campaign plane with the candidate. After the inauguration in January 1981, Fischer was appointed Special Assistant to the President with an office adjacent to the Oval Office.[135] For the next 4 years—until April 1985—Fischer was in almost constant contact with the President.

As President Reagan's second term began in early 1985, Fischer and his wife decided for personal reasons to move to Utah. By the fall of 1985, however, Fischer wanted to return to Washington and asked Artiano to let him know about employment or consulting opportunities[136] When contacted by Artiano about the IBC opportunity, Fischer authorized Artiano to pursue discussions with Miller on his behalf.[137]

When Miller decided to retain Fischer and Artiano, he sought Channell's concurrence because NEPL ultimately was to be the recipient of, and billed by IBC for, the "consulting" services performed by Fischer and Artiano. While all the participants recall that Fischer and Artiano agreed to act as subcontractors for IBC and provide services to Channell's organizations, there is sharp dispute over the terms of that agreement. This dispute is only sharpened by the absence of a written understanding.

Channell and Conrad insist that they agreed to pay Fischer and Artiano $50,000 for each meeting Fischer scheduled with the President for a NEPL contributor. Conrad claims to recall a meeting in December 1985 in Miller's office attended by Miller, Artiano, Fischer, Channell, and himself at which Artiano broached, and Channell accepted, this proposal.[138] Channell recalls Fischer and Artiano making this proposal but claims that he rejected it as too expensive. Instead, according to Channell, he opted for a straight retainer of $20,000 per month.[139] Gomez recalls that Fischer and Artiano were to be compensated at least in part based on the number of Presidential meetings they could arrange for NEPL contributors.[140]

Fischer and Artiano vehemently deny that any such proposal was made or accepted. Artiano, who negotiated with Miller on behalf of Fischer, testified that they initially agreed to a 2-year consulting contract for a monthly retainer of $20,000 a month. When he and Fischer realized the amount of work Channell demanded, however, Artiano testified that he requested a $50,000 "acceleration" of their retainer. This payment was made to them on January 31, 1986, and was split evenly by Artiano and Fischer. Later, Fischer demanded and received another $50,000 "acceleration," which he did not split with Artiano. In July 1986, Fischer and Artiano recast their arrangement with IBC entirely, replacing the 2-year consulting contract with a formal joint venture between "David C. Fischer & Associates" and IBC.[141]

According to both Fischer and Artiano, they learned in early 1986 that Channell and Conrad were operating under the assumption that there was a straight fee-for-Presidential meeting arrangement. Artiano thereupon convened a meeting of all the principals and disabused Channell and Conrad of that notion.[142]

Miller's recollection lends some credence to everyone's account. He testified that the initial agreement, struck in December 1985, was a $20,000-a-month consulting arrangement. He testified, however, that this initial agreement did not contemplate Fischer setting up meetings at the White House. Shortly after striking the original deal, according to Miller, Channell began to make increased demands upon Fischer, one aspect of which was setting up meetings between the President and major NEPL contributors. In exchange for servicing those increased demands, Fischer and Artiano demanded, through Miller, an acceleration of their retainer to $70,000 per month (that is, $50,000 per month more than the monthly fee of the original arrangement). When Miller relayed this demand to Channell, Channell suggested that, for such a sum, NEPL should get at least one meeting with the President each month. According to Miller, Channell ultimately did agree to this acceleration.[143]

All told, between December 1985 and February 1987, IBC paid Fischer $397,400 and Artiano $265,000. Artiano transferred $60,000 of his payments to Fischer. All of the payments were reimbursed to IBC by NEPL.

When asked about allegations that Fischer was paid $50,000 for each meeting arranged with the President, Donald Regan, the President's Chief of Staff, testified that he had no independent knowledge of such an arrangement, but, if true, the allegations would be a "real embarrassment." According to Regan, "we thought he was doing it out of his concerns for the contras and the goodness of his heart, a public pro bono type of thing." He continued: "To find out he was being paid for it was a real shock . . . . [A]nyone getting paid to get a group into the White House, we tried to block that." [144]

Fischer, however, contends that Regan knew by the first meeting between the President and Channell supporters—in January 1986—that Fischer was acting as a paid consultant to the Channell organization. When he raised the subject with Regan, according to Fischer, Regan responded, "I hope you're being compensated for this."[145]

North's Other Fundraising Efforts

Separate from his Channell-related efforts, in the fall of 1985, North enlisted Roy Godson—a consultant to the National Security Council—to assist in raising funds for a humanitarian organization involved with Nicaragua. Godson's efforts led to a deposit to the I.C., Inc. account through first the Heritage Foundation and then the Institute for North-South Issues (INSI), a non-profit organization controlled by Miller and Gomez. This deposit originally took the form of a $100,000 grant from the Heritage Foundation to INSI. The Heritage Foundation received the money for the "grant" from a private contributor arranged by Godson and Clyde Slease, a Pittsburgh attorney and friend of Godson's. Godson had arranged for Slease to meet privately with North and McFarlane on the need to raise funds for the humanitarian organization.[146]

The true objective of this "grant" was disguised in correspondence between Miller (as Treasurer of INSI) and Edwin J. Feulner (as President of the Heritage Foundation) with whom Godson had met previusly. Miller sent an INSI "grant proposal" to the Heritage Foundation in September 1985 proposing the preparation and dissemination of public information materials in Central America. This proposal requested $100,000. On October 15, the Heritage Foundation sent INSI a check for $100,000, with Feulner stating by letter that "[m]y colleagues and I have discussed your proposal in some detail, and are pleased to respond in a positive way." [147]

INSI passed to I.C., Inc. only $80,000 of the $100,000 Heritage Foundation "grant," and retained the $20,000 balance as an administrative fee. The ultimate distribution of the $80,000 forwarded to I.C., Inc. was made to an entity which, according to Miller, North represented was an account controlled by the humanitarian organization. INSI misrepresented on its 1985 IRS Form 990 the nature of the activities supported by this money.[148]

Godson also arranged for John Hirtle, a stockbroker in Philadelphia, to meet with North in Washington. Following this meeting, Hirtle and North met again in Philadelphia with two prospective contributors.[149] One subsequently donated $60,000 by check dated December 13, 1985, directly to INSI. Shortly thereafter, this amount was then transferred by INSI directly to a Lake Resources account in Switzerland.

What Happened to the Money

Just as only a small fraction of the Iranian arms profits was used for the Contras, so only a small part of the money Channell raised for the Contras reached them. Fischer and Artiano received more than $650,000 or more than five percent of the total money raised, and Miller, Gomez, and their companies retained a large percentage of the $5 million that IBC received from NEPL. A total of $2,740,000 was transferred by IBC to I.C., Inc., and $430,000 directly to Lake Resources. After deducting the payments to Fischer and Artiano—which eventually were reimbursed by NEPL—the balance, approximately $1.2 million, was retained by IBC for fees-for-services and expenses on NEPL's behalf.* This amount, however, is not all that Miller and Gomez received from the venture. Miller testified that North agreed in late 1985 that he and Gomez could begin to collect a 10 percent commission on the payments funnelled to the Contras through IBC and I.C., Inc. Miller stated that North said that the 10 percent was reasonable since "most of the other people in the business of providing assistance to the Contras were taking 20% to 30%." [150] North, in his testimony, denied that he had agreed to any specific percentage, but rather stated that he had approved "fair, just, and reasonable" compensation to Miller and Gomez.[151] Nonetheless, North's notebooks contain an entry for November 19, 1985, which states "IBC - 10%."

Miller and Gomez formed another Cayman Islands corporation in early May 1986, World Affairs Counselors, Inc. (WACI) to receive the compensation approved by North. Miller instructed his Cayman Islands agent to deduct automatically for WACI 10 percent of all funds transferred to I.C., Inc.[152] A total of $442,000 was taken by Miller and Gomez pursuant to this commission arrangement. Miller never told Channell that he and Gomez were receiving a 10 percent commission approved by North. Both Miller and Gomez believed that once the Contra assistance money left NEPL, it was subject to North's total discretion and control.[153]

Including these commissions, IBC, Miller, and Gomez received more than $1.7 million from the money raised by NEPL for the Contras. Channell's take was also substantial, though apparently not of the magnitude of Miller's and Gomez's total compensation. He furnished his offices extravagantly and was lavish in his expenditures. He drew compensation for 1985 and 1986 totalling $345,000, while Conrad and his organization received more than $270,000, extraordinary earnings for nonprofit fundraisers.

Out of the money raised by NEPL, the Contras and their affiliated entities received only $2.7 million, with approximately $500,000 going to other persons and entities engaged in activities relating to the Contras. The money was routed through IBC and I.C., Inc. and disbursed at the direction of North to Lake Resources, Calero, and the other persons and entities. In virtually every case, Miller would tell North when money was available and North would then instruct him on what to do with it. Figure 4–1 depicts the flow of money. In addition, as described in the next section, more than $1.2 million was spent on political advertising and lobbying for the Contras.

Political Advertising for the Contras

Apart from financial assistance to the Contras, the major project of the Channell and Miller organizations in 1985 and 1986 was a "public education" and lobbying program in support of U.S. Government aid for the Contras.

The major vehicle in the "public education" campaign was a series of television advertisements prepared by the Robert Goodman Agency in Baltimore that cost NEPL $1 million. Adam Goodman of that agency, following the Senate's approval of the Contra funding bill in 1986, wrote a letter to Channell describing their achievement:

> By design, we launched the four-week national television ad campaign in Washington, DC, in late February. This reflected the economy of reaching all 435 Members of the House (and 100 United States Senators) in one sitting. Beginning with Week 2, and running through the first decisive House vote in late March, we also aired spot commercials in 23 additional television markets across the country. These targeted markets, covering the home Districts of nearly thirty Congressmen experts considered to be at the core of the key 'swing vote' on Contra funding, added scope and credibility to the ad campaign. In fact, N.E.P.L.'s national television spot series was ultimately seen by more than 33 million people, or one out of every seven Americans.[154]

Supplementing the television programs were press conferences and speaking tours by persons supporting the Contras. These were arranged by IBC and another public relations firm, Edelman, Inc., retained by Channell, which was paid $92,000 by NEPL.

NEPL paid $115,000 for extensive polling by the Finkelstein Company as an aid to selecting areas where television advertisements and speaking tours would most likely have a favorable effect on a Congressional vote. He also retained two companies, Miner & Fraser and the Lichtenstein Company, to generate letters to Congressmen supporting Contra aid, and he paid two lobbyists for their services in support of this effort: Dan Kuykendall, who concentrated on undecided Republicans and conservative Democrats, and Bruce Cameron, who focused on liberal Democrats.

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*During the relevant time periods IBC received $356,472 under its contract with the State Department, $39,000 from Calero for services, $180,000 from affiliated entities, and $407,304 from other individuals or organizations. In other words, the amount retained by IBC from NEPL accounted for nearly 60% of IBC's income in 1985 and 1986.

Another organization, Prodemca, which had concentrated on Central American issues, also received payments from Channell. Its representatives apparently participated in strategy sessions about enlisting Congressional support.

Finally, it appears that Channell engaged in advertising targeted to defeat Representative Michael Barnes's bid for a Senate seat in Maryland. Representative Barnes had been a vocal opponent of military assistance to the Contras. Channell's Anti-Terrorism American Committee ran a series of television advertisements opposing Representative Barnes during the primary campaign. When Representative Barnes was defeated in the primary, Channell and his associates (Cliff Smith and Krishna Littledale) sent a telegram to North exulting in this result:

> We have the honor to inform you that Congressman Michael Barnes, foe of the freedom fighter movement, adversary of President Reagan's foreign policy goals and opponent of the President's vision for American security in the future has been soundly defeated in his bid to become the Democratic candidate for the U.S. Senate from Maryland.
>
> His defeat signals an end to much of the disinformation and unwise effort directed at crippling your foreign policy goals.
>
> We, at the Anti-Terrorism American Committee (ATAC), feel proud to have participated in a campaign to ensure Congressman Barnes' defeat.[155]

Channell-Miller Network: The End

The Beginning of the End

On October 18, 1986, the President signed legislation appropriating $100 million for the Contras ($30 million for humanitarian assistance and $70 million in unrestricted aid). The anticipation of this legislation led to a downturn in the activities of the Channell-Miller fundraising and Contra assistance network (see Figure 4-1) after the summer of 1986.

With the disclosure in early November of the sale of arms to Iran, however, persons involved in the network became concerned that the story of the network would unravel and become public. This prescient concern led to meetings between Miller and North on November 20 and 21.

The initial meeting was requested by Miller. They met in the hallway outside of North's office in the Old Executive Office Building. Miller told North that he was worried about the possible legal ramifications and the costs associated with a legal defense. North told Miller that he should use the money left in the Intel Co-Operation (or I.C., Inc.) account (approximately $200,000) for any legal fees that might arise.[156]

North called Miller the next day, November 21, to arrange a meeting later that afternoon. Miller met North in the Old Executive Office Building, and North asked him for a ride to Dupont Circle. Miller told North that money was needed from a foreign source to fund public relations and congressional activities on behalf of the United Nicaraguan Opposition (UNO). Miller suggested contacting the Sultan of Brunei or an Arab country. North's response was "I gave one to Shultz already and he [screwed it up]." North also stated that "if Shultz knew that the Ayatollah was bankrolling this whole thing he'd have a heart attack." Miller did not understand either reference.[157]

Either that day or the day before, North told Miller that the Attorney General had advised North to obtain legal counsel.* Miller dropped North at the office building at 1800 Massachusetts Avenue, N.W., where Tom Green's law offices, among others, are located.[158]

The Lowell Sun Allegations

On December 14, 1986, the Lowell (Mass.) Sun ran a story under the headline "Money from Iranian Arms Sales Was Used to Back Conservatives During 1986 Election." The story stated that "[a]bout $5 million from the almost $30 million in excess raised from arms sales to Iran was filtered to conservative political action groups" to "support candidates who backed President Reagan's pro-Contra and Star Wars policies." The only such group named in the article was NEPL.

The Committees have uncovered no evidence to substantiate the allegation that NEPL or any other of Channell's political action groups received any proceeds derived from the sale of arms to Iran. In this regard, the Committees have accounted for virtually all of the funds received by Channell's organizations during the relevant period, none of which are traceable to the Iranian arms sales. Similarly, the Committees have accounted for virtually all expenditures from the Enterprise, and none of these were paid to Channell's organizations.

NEPL Activities in December 1986

In December 1986, NEPL's staff received an unusually lengthy holiday vacation from December 15 to January 5, 1987. The reason given for this lengthy break was that the media were making it too difficult for the organizations to conduct their work and that the most sensible response was to close operations for a couple of weeks.[159]

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*The Attorney General denied that he offered such advice to North. Meese Dep., 7/8/87, at 103. See Chapter 20 for a more complete description of the events in November 1986.

Immediately prior to the extended holiday, two NEPL accounting employees were instructed by their supervisors to delete from the accounting records any and all references to the "Toys" project. As mentioned above, contributions intended for the purchase of lethal supplies generally were designated on NEPL's books for the "Toys" project. Alterations in the accounting records and related floppy discs were made to modify prior references to "Toys" to a neutral project named "CAFP TV" (presumably Central American Freedom Project—Television Advertising).[160]

In addition, NEPL's principal accountant took all NEPL accounting materials home with him during the vacation, including financial records, bank statements, check books, deposit slips, and the like.[161] The evidence obtained by the Committees suggests that all such records were taken to perform year-end accounting tasks and were returned by the accountant without further alteration.

February 1987 Report from IBC to NEPL

On February 16, 1987, IBC issued a report to NEPL that reconstructed the disposition of the Contra assistance payments made by NEPL to IBC and I.C., Inc. during the period from July 1985 through the end of 1986. The report contained supporting documentation for many of the relevant transactions.[162]

In a summary at the beginning of the report, IBC acknowledged that most of the disbursements of these funds were made "at the request of Lt. Col. Oliver L. North." Moreover, the summary states that "we were assured by [North] at the time that the funds were to be applied solely for humanitarian assistance."[163] Miller has told the Committees that he would write these statements differently if he were writing them today.[164]*

Guilty Pleas of Channell and Miller

On April 29, 1987, Channell pled guilty to a one-count criminal information filed the same day by the Independet Counsel. As noted above, the information charged that Channell, Miller, "and others known and unknown to the Independent Counsel" conspired "to defraud the IRS and deprive the Treasury of the United States of revenue to which it was entitled by subverting and corrupting the lawful purposes . . . of NEPL by using NEPL . . . to solicit contributions to purchase military and other types of non-humanitarian aid for the Contras," in violation of 18 U.S.C. Section 371. The acts identified by the information as part of the conspiracy include the Ramsey, Hunt, Newington, O'Boyle, Garwood, and Claggett solicitations. At the hearing in which Channell's guilty plea was accepted by the Federal district court, Channell named Miller and North as his co-conspirators.

Miller pled guilty to a substantively identical criminal information on May 6, 1987. Both Channell and Miller are awaiting sentencing.

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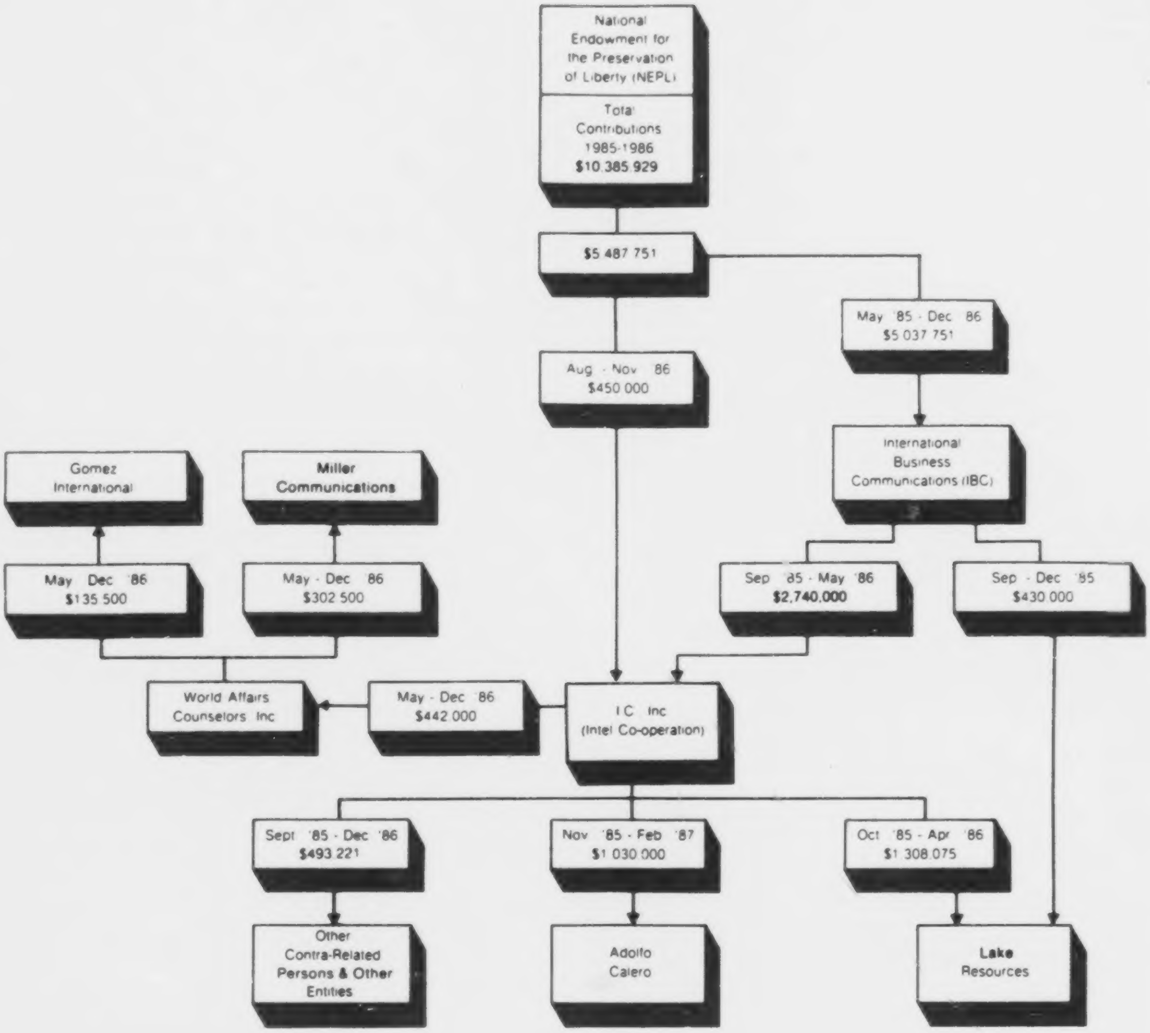
*According to Miller, he told North in late 1986 that he "hoped to hell the account had been used for humanitarian assistance." North responded "Oh hell, yes." R. Miller Dep., 8/21/87, at 331.

Figure 4-1. The Channell-Miller Contra Assistance Network


National Endowment for the Preservation of Liberty (NEPL)
Total Contributions 1985-1986 $10 385 929
$5 487 751
May '85 - Dec '86 $5 037 751
Aug - Nov '86 $450 000
International Business Communications (IBC)
Gomez International
Miller Communications
May - Dec '86 $135 500
May - Dec '86 $302 500
Sep '85 - May '86 $2,740,000
Sep - Dec '85 $430 000
World Affairs Counselors Inc
May - Dec '86 $442 000
I C Inc (Intel Co-operation)
Sept '85 - Dec '86 $493 221
Nov '85 - Feb '87 $1 030 000
Oct '85 - Apr '86 $1 308 075
Other Contra-Related Persons & Other Entities
Adolfo Calero
Lake Resources

This chart represents the money flow of the Channell-Miller Contra Assistance Network.

Source: Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House Select Committee to Investigation Covert Arms Transactions with Iran.

Chapter 4

1. Channell Dep., 9/1/87, at 2-4.
2. *Id.*, at 6-10, 14-16, 21; 9/2/87, at 163.
3. *Id.*, 9/1/87, at 30-34.
4. CH 4477-80.
5. CH 4437.
6. Channell Dep., 9/2/87, at 163-64.
7. *Id.*, 9/1/87, at 40-41; 9/2/87, at 165.
8. *Id.*, 9/1/87, at 49-50.
9. Conrad Dep. at 4-6.
10. *Id.* at 6-8.
11. *Id.* at 8-10.
12. *Id.* at 12-16.
13. *Id.* at 20-22, 25-27.
14. *Id.* at 24, 557, 559-60.
15. *Id.* at 28-38.
16. *Id.* at 38-39.
17. *Id.* at 41.
18. R. Miller Dep., 8/20/87, at 92-93.
19. *Id.*, 6/23/87, at 19-20.
20. *Id.*, 6/23/87, at 19-21; 8/20/87 at 93-95.
21. Audit Report No. 7PP-008, Office of Inspector General,Department of State (July 1987).
22. *Id.*
23. R. Miller Dep., 8/21/87, at 93.
24. *Id.*, at 285-86, 306.
25. *Id.*, 8/20/87, at 125-26.
26. Channell Dep., 9/2/87, at 165-67.
27. Fraser Dep. at 28, 31-39; N 6298.
28. Fraser Dep. Ex. 3.
29. Fraser Dep. at 41-60.
30. Channell Dep., 9/2/87, at 75-77; Conrad Dep. at 580-81.
31. Fraser Dep. at 28-30, 48-49.
32. Channell Dep., 9/1/87, at 52-53.
33. *Id.*, at 52-54.
34. R. Miller Dep., 8/20/87, at 135-37.
35. *Id.*, at 137.
36. *Id.*, at 137-39.
37. *Id.*, at 14849.
38. CH 32022.
39. Channell Dep., 9/1/87, at 80-82; R. Miller Dep., 8/20/87, at 141-42.
40. Channell Dep., 9/1/87, at 80-83; R. Miller Dep., 8/20/87, at 142.
41. CH 36920-35; R. Miller Dep. Ex. 10.
42. Conrad Dep., 6/10/87, at 75-76; Gomez Dep. at 32-33.
43. R. Miller Dep. Ex. 10.
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.*
48. *Id.*
49. R. Miller Dep., 6/23/87, at 24-25.
50. Ramsey Dep. at 55; R. Miller Dep., 6/23/87, at 27.
51. R. Miller Dep., 6/23/87, at 27.
52. *Id.*
53. RM 3577; RM 3578.
54. Channell Dep., 9/1/87, at 76-78.
55. *Id.*, 9/2/87, at 171.
56. *Id.*, 9/1/87, at 87-88; 9/2/87, at 168-71. See also O'Boyle Test., *Hearings*, 100–3, 5/21/87, at 117–19.
57. Channell Dep., 9/1/87, at 78-80.
58. *Id.*
59. R. Miller Dep., 8/21/87, at 382-89.
60. *Id.*, at 389-90.
61. *Id.*, 8/20/87, at 98-99.
62. RM 1136-44.
63. R. Miller Dep., 8/20/87, at 96-100.
64. *Id.*, at 102-04, 113-14.
65. *Id.*, 6/23/87, at 29.
66. North Test., *Hearings*, 100–7, Part II, 7/13/87, at 58–59.
67. RM 1541-42.
68. Miller Dep., 8/20/87, at 124.
69. *Id.*, 6/23/87, at 28.
70. Channell Dep., 9/1/87, at 91.
71. R. Miller Dep., 6/23/87, at 28-30.
72. *Id.*, 8/20/87, at 110-13.
73. CH 35141.
74. McLaughlin Dep. at 50-52.
75. O'Boyle Test., *Hearings*, 100–3, 5/21/87, at 117–19.
76. *Id.*
77. *Id.* at 120.
78. R. Miller Dep., 9/15/87, at 511-15.
79. North Test., *Hearings*, 100–7, Part I, 7/7/87, at 89–90.
80. *Id.*, at 91.
81. R. Miller Dep., 6/23/87, at 32-33.
82. *Id.*, at 32-34.
83. RM 971.
84. R. Miller Dep., 7/3/87, at 75-76; 8/20/87, at 252-56.
85. RM 859.
86. R. Miller Dep., 8/20/87, at 266-67.
87. Conrad Dep., 6/10/87, at 147-48.
88. Channell Dep., 9/1/87, at 123.
89. *Id.*, at 113-20; 9/2/87, at 171-72.
90. *Id.*, 9/1/87, at 110-11.
91. Hunt Dep., at 32-33.
92. *Id.*, at 21.
93. *Id.*, at 32, 48.
94. Channell Dep. 9/1/87, at 124-25.
95. Hunt Dep. at 52.
96. *Id.*, at 46-55, 79-80, 82-83.
97. *Id.*, at 34, 56, 80-85.
98. *Id.*, at 67, 82-83.
99. RM 971.
100. R. Miller Dep., 6/23/87, at 75-76; 8/20/87, at 254-55.
101. Newington Dep., at 16-17, 36, 56-58.
102. RM 1042.
103. R. Miller Dep., 8/20/87, at 248-50.
104. *Id.*, 6/23/87, at 34-35.
105. *Id.*, at 34-36.
106. *Id.*, at 36-37.
107. Newington Dep., at 33, 45, 86-87, 90-93.
108. Channell Dep., 9/1/87, at 148.
109. O'Boyle Test., *Hearings*, 100–3, 5/21/87, at 116–17.
110. *Id.* at 117–18.
111. *Id.* at 118–19.
112. *Id.* at 119.
113. *Id.* at 120.
114. *Id.* at 120–21; O'Boyle Dep. at 42-44.

115. O'Boyle Test., *Hearings*, 100-3, 5/21/87, at 120; O'Boyle Dep. at 46-47.

116. O'Boyle Test., *Hearings*, 100-3, 5/21/87, at 121-22; O'Boyle Dep. at 54-55.

117. O'Boyle Test., *Hearings*, 100-3, 5/21/87, at 122.

118. *Id.* at 123-24.

119. Garwood Test., *Hearings*, 100-3, 5/21/87, at 112-14; Garwood Dep. at 12-15, 16-18, 20, 28-30, 32-36.

120. Garwood Test., *Hearings*, 100-3, 5/21/87, at 113.

121. *Id.* at 112-13; Garwood Dep. at 33-34.

122. Garwood Test., *Hearings*, 100-3, 5/21/87, at 113-14; Garwood Dep. at 34.

123. Garwood Test., *Hearings*, 100-3, 5/21/87, at 114; Garwood Dep. at 35-38.

124. Garwood Test., *Hearings*, 100-3, 5/21/87, at 115-16; Garwood Dep. at 58-61.

125. N 12528.

126. New York Times, 3/20/87, at A-10, col. 4.

127. N 10298.

128. N 22715.

129. Poindexter Dep., 5/2/87, at 203.

130. *Id.* at 202.

131. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 92.

132. Artiano Dep. at 58-59.

133. *Id.* at 44-45.

134. *Id.* at 45; Fischer Dep. at 6.

135. Fischer Dep. at 9; Artiano Dep. at 46-50.

136. Fischer Dep. at 159.

137. Artiano Dep. at 59.

138. Conrad Dep., 6/10/87, at 179-80.

139. Channell Dep., 9/1/87, at 155-59.

140. Gomez Dep. at 61-64.

141. Artiano Dep., at 64-72, 78-90; Fischer Dep., at 35-38; 97-104, 111-119.

142. Fischer Dep., at 104-05.

143. R. Miller Dep., 8/21/87, at 358-62.

144. Regan Test., *Hearings*., 100-10, 7/30/87, at 58; 7/31/87, at 116.

145. Fischer Dep. at 48.

146. Godson Dep. at 53-70; R. Miller Dep., 8/20/87, at 276-81; Slease Dep. at 20-36, 56-57.

147. RM 17211.

148. Godson Dep. at 9, 40, 47-85; R. Miller Dep., 8/20/87, at 276-81; Slease Dep. at 20-36, 56-57.

149. Godson Dep., at 89-96; Hirtle Dep., at 27-48.

150. R. Miller Dep., 6/23/87, at 38.

151. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 58-59.

152. R. Miller Dep., 8/20/87, at 226-28.

153. *Id.*, at 228; Gomez Dep., at 88-89.

154. Letter from Adam Goodman to Spitz Channell, 3/31/86, reproduced as part of Channell Dep. Ex. 1.

155. Channell Dep. Ex. 1, No. A36004.

156. R. Miller Dep., 6/23/87, at 5-8.

157. *Id.*, at 9-14.

158. *Id.*, at 14-15.

159. McLaughlin Dep. at 122-30.

160. S. McMahon Dep. at 50-54.

161. *Id.* at 23-24.

162. RM 1-88.

163. RM 3.

164. R. Miller Dep., 8/20/87, at 236-37.

Chapter 5

NSC Staff Involvement In Criminal Investigations And Prosecutions

During the period covered by the Boland Amendment, federal law enforcement agencies conducted investigations that touched upon various aspects of the secret Contra support operation. Concerned that these investigations, if pursued, would expose the NSC staff's covert operations, North and Poindexter reacted by contacting the agencies involved. They sought to monitor investigations and, in some cases, to delay or impede their progress by suggesting that national security was at stake. Confronted with such assertions from White House officials involved with the nation's security, law enforcement agencies understandably cooperated with the NSC staff by delaying some investigations, arranging to move a convicted former foreign official whom North was afraid would disclose facts about the Contras to a minimum security prison, and giving Poindexter and North information about other investigations.

The Committees are aware of seven such episodes, three involving the United States Customs Service and four involving the Department of Justice. They represent an integral part of the NSC staff's efforts to keep its operations even from those with legitimate law enforcement interests.

North and the Customs Service

Maule Aircraft Corporation

In the summer of 1986, the United States Customs Service, following up on a CBS news report, began an investigation into allegations that Maule Aircraft Corporation of Macon, Georgia, had shipped four aircraft into Central America to support the Contras in possible violation of U.S. export control laws.[1]

In August 1986, the Commissioner of the U.S. Customs Service, William von Raab, was approached by North, who told him that Customs agents in Georgia were giving Maule Aircraft Corporation a hard time.[2] North said the Maule Corporation shipped aircraft such as "Piper Cubs" down south. North also said that Maule was "a close friend of the President." Commissioner von Raab told North he would look into the Customs Service investigation and assigned the matter to William Rosenblatt, Assistant Commissioner for Enforcement.[3]

Rosenblatt contacted North, who told Rosenblatt that the people involved in the sale and export of the four Maule aircraft were "good guys" and had done nothing illegal.[4] North insisted that the aircraft were simply "super Piper Cubs" and were exported only to a Central American country, where they were used to supply the Contras with medical and humanitarian supplies.[5] Rosenblatt explained that in order to verify the legality of the transactions, Customs needed certain documents and photographs of the aircraft, which North promised to produce. In exchange, Rosenblatt agreed to postpone issuance of subpoenas.

Over the course of the next several weeks, Rosenblatt continued to contact North periodically to request the promised documentation,[6] which North led him to believe would be forthcoming "momentarily." Because of North's promises, Rosenblatt told the agent in charge to suspend issuing a grand jury subpoena for Maule, although the agent asserted that the Maule officials were "stone-walling" him.[7] In the interim, Rosenblatt found himself dealing with North on two other matters, one involving a Customs informant named Joseph Kelso and another involving Southern Air Transport's role in the Hasenfus aircraft, where North asked Customs to narrow a subpoena so as not to expose other sensitive operations (see Chapter 18).

On November 10, Rosenblatt met with Commissioner von Raab to discuss North's assertions that the Customs investigation could compromise national security, including an effort to obtain the release of the hostages.[8] At that meeting, von Raab advised Rosenblatt to speak with Robert Kimmitt, General Counsel to the Treasury Department, about his inability to obtain the Maule and SAT records. Rosenblatt scheduled that meeting for the afternoon of November 17.[9]

On the morning of November 17, Rosenblatt called North to attempt again to get the promised documents on Maule Aircraft. To Rosenblatt's surprise, North indicated that he had the documents and would send them right over. When they arrived, however, Rosenblatt was quite disappointed. They did not include purchase orders, photographs, or other documents sufficient to dispose of the Customs inquiry. That afternoon, Rosenblatt met with Kimmitt and related the entire episode involving Maule and SAT.[10]

At that point, the investigation resumed, 6 weeks after it had been halted at North's request.

While Rosenblatt testified he never mentioned the Kimmitt or von Raab meetings to North and he had no contact with North after November 17,[11] North's notes suggest that Rosenblatt did brief him on these matters after November 17. A note dated "19 Nov. 86" reads:

—Bill Rosenblatt
—Joe Ladow - P/M Maule
—Letter from Justice
—Talk to Commissioner next week
—Talked to Kimmitt re relationship
—Profs w/C-123 military configuration required sojourn
—Names in document - La dodge needed advice on how to handle

—Call Von Raab[12]

Kelso

Another matter on which Customs had dealings with North involved Joseph Kelso. Kelso was on probation after a conviction for illegally exporting arms to Iraq. In 1986, he approached Customs under an alias and offered to work as an informant.[13]

In the spring of 1986, Kelso, accompanied by a Customs informant, traveled to Costa Rica to gather information on an alleged counterfeiting and drug ring that supposedly included corrupt DEA agents.[14] Kelso and the informant had not notified the U.S. Embassy or Costa Rican authorities of their investigation, and Kelso was detained and questioned by the Costa Rican authorities and DEA agents as to what he was doing in the country.[15] Kelso was then taken to John Hull's farm.[16] Hull reported the incident to North and Owen in a letter.[17] At the same time, Tambs complained to Customs about their sending informants into Costa Rica without notifying the Embassy.

After returning to the United States, Kelso, who faced charges of violating his probation, turned over tape recordings of his activities to Customs, and claimed that, apart from his trip for Customs, he was working for the intelligence community.[18] In or about September 1986, Rosenblatt called North to find out if Kelso was working for the intelligence community.[19] North, who was already aware of Kelso's visit to Costa Rica, suggested that Rosenblatt allow Owen, whom Rosenblatt did not know, to listen to Kelso's tapes to verify his claims. Rosenblatt agreed on the assumption that Owen was part of the NSC staff, or otherwise assisting North.[20]

After receiving the Kelso tapes from Rosenblatt in October, Owen made two trips to Central America where he met with DEA agents. Although Owen was purporting to investigate Kelso's status, he never communicated further with Rosenblatt, and Rosenblatt concluded from this silence that Kelso had not been working for the intelligence community.[21]

Miami Neutrality Investigation

In connection with another investigation, this one conducted by the Office of the United States Attorney for the Southern District of Florida, North and Poindexter were able to obtain information concerning the vulnerability of the Enterprise.

The Roots of the Investigation

On July 21, 1985, the Miami Herald published an article by reporters Martha Honey and Tony Avirgan. In that article, a mercenary for Civilian Military Assistance (CMA) named Steven Carr, who was then imprisoned in Costa Rica, spoke of an arms shipment from Fort Lauderdale to a Central American location. The article caught the attention of the FBI in the Southern District of Florida, which opened an investigation into Carr's allegations and alerted FBI headquarters in Washington, D.C., as required in any matter involving the Neutrality Act.[22]

Garcia Allegations

In December 1985, an individual named Jesus Garcia was convicted in the Southern District of Florida on charges of possessing an unlicensed machine gun.[23]

While Garcia was awaiting sentence, he offered through his attorney to provide federal authorities with information relating to paramilitary plots in Central America. As a result of that offer, he was interviewed on January 7, 1986 by two FBI agents. He claimed that he had been set up on the machine gun charge by a person who supposedly worked for Tom Posey and the CMA, a pro-Contra paramilitary group. According to Garcia, Posey was attempting to neutralize him because of his knowledge of a CMA plot to assassinate Ambassador Lewis Tambs to collect a reward offered by a notorious drug kingpin in Central America. The assassination, Garcia told the FBI, would, as an added benefit, be blamed on the Sandinistas, thereby assisting the Contras' cause. Garcia also gave the FBI further details on the gun shipment reported earlier in the Miami Herald.[24]

The FBI agents and Jeffrey Feldman, the Assistant United States Attorney conducting the investigation, were all skeptical.[25] Nevertheless, given the gravity of Garcia's allegations, the investigation continued. At the request of the FBI, embassy officials in Costa Rica interviewed Carr and other American mercenaries imprisoned in that country. Hotel records at the alleged site of a critical meeting seemed to confirm its occurrence. Flight plans and records suggested that the alleged arms shipment also could have occurred.[26]

During this phase of the investigation, the FBI received allegations that North, Owen, and John Hull were involved in, or at least aware of, the gun running plots.[27] This information was not supplied by Garcia, but came through other sources.[28]

On March 14, 1986, an FBI agent and Feldman met with Anna Barnett, the Executive Assistant United States Attorney. While the FBI agent and Feldman were in Barnett's office discussing the investigation, United States Attorney Leon Kellner came in to inquire whether anyone was aware of an alleged plot to assassinate Ambassador Tambs. According to Kellner, he had just received a call from someone at the Department of Justice in Washington who wanted information about the investigation.[29] At or shortly after that meeting, it was decided that the FBI agents and Feldman would travel to New Orleans to interview Jack Terrell, a/k/a "Colonel Flaco," a former CMA mercenary who, they had been told, knew more details of the conspiracy.[30]

Activity in Washington

The FBI agents had been advising headquarters by telex throughout the early stages of the investigation and in early March had received a request from Oliver Revell, Executive Assistant Director of the FBI, for a detailed summary of their findings. Their report was forwarded to headquarters on March 20, 1986.[31]

Revell's inquiry was itself sparked by a request from Deputy Attorney General D. Lowell Jensen for an update on the investigation.[32] Revell sent a summary of the agents' report five pages in length, to Jensen.[33]

Upon receiving the memorandum, Jensen met with Attorney General Meese to discuss the case. Jensen recalls that he and Meese decided that Admiral Poindexter, the National Security Adviser, should be briefed on the matter because of its international implications and the possibility of danger to an American diplomat. Jensen was uncertain, however, whether he or Meese initiated the proposal to brief Poindexter.[34] Meese testified at his deposition that he did not recall discussing this matter with Jensen.[35]

Jensen also forwarded a copy of Revell's memorandum to Associate Attorney General Steven Trott, who forwarded it in turn to Deputy Assistant Attorney General Mark Richard. On the "buck slip" accompanying the memorandum, Trott wrote:

> Please get on top of this. [Jensen] is giving a heads up to the N.S.C. He would like us to watch over it.
>
> Call Kellner, find out what is up, and advise him that decisions should be run by you.[36]

On another buck slip attached to the memorandum for his own record, Richard wrote, "3/26/86, spoke to Kellner—AUSA not back yet from [New Orleans]."[37]

Richard recalls speaking with Kellner about the case on several occasions over the next several months. Trott and Jensen also believe they spoke to Kellner about the case on a few occasions. Each of them specifies that he never attempted to impede or otherwise interfere in the investigation itself, and the Committees have no evidence that contradicts this.[38]

On March 26, 1986, Jensen went to the NSC and showed Poindexter a copy of Revell's memorandum. Jensen does not recall any discussion that may have taken place. Poindexter testified that he does not recall the briefing at all.[39]

Terrell and Costa Rica

In New Orleans, Terrell provided the FBI agents and Feldman with additional information on the alleged assassination plot and arms shipment. When pressed, however, Terrell admitted that most, and perhaps all, of his information was based on hearsay rather than on his direct participation or observation.[40]

Feldman and the FBI agents traveled to Costa Rica on March 31, 1986, and reported to the U.S. Embassy. There they met with Tambs, who wanted to know the purpose of their visit. Feldman briefed Tambs thoroughly on their investigation and intentions. During that briefing, Feldman showed Tambs a chart he had drawn to illustrate the supposed conspiracy that had been described to him. The chart showed a pyramid of participants, with lines of involvement running up through John Hull and Robert Owen to Oliver North at the top.[41]

When he saw the chart, Tambs summoned "Thomas Castillo," who introduced himself to the investigators as a CIA station chief. Castillo provided them background information on Hull. According to Feldman, Castillo also spoke of North warmly as "the person who introduced me to the President of the United States last week."[42]

Over the course of the next two days, Feldman, the FBI agents, and various embassy personnel interviewed Steven Carr and several other imprisoned mercenaries. They attempted to set up an interview with Hull, who initially agreed and then declined to speak to them.[43] Feldman was also told by an employee at the U.S. Embassy that Hull had been contacted by the NSC about the investigation.[44]

North received a briefing from Owen on Feldman's visit. In a letter dated April 7, 1986, Owen identified each of the investigators who had appeared in Costa Rica, then wrote:

> According to [Castillo], Feldman looks to be wanting to build a career on this case. He even showed [Castillo] and the Ambassador a diagram with your name at the top, mine underneath, and

> John's underneath mine, then a line connecting the various resistance groups in [a Central American country.]
>
> Feldman stated they were looking at the "big picture" and not only looking at a possible violation of the neutrality act, but at possible unauthorized use of government funds. They went several times to the prison to question the five in jail. They tried to talk with John, but he was advised not to talk with them unless he had a lawyer present.[45]

April 4 Meeting

Feldman met late on the afternoon of April 4, 1986, with Kellner and Barnett to discuss the results of his trip to Costa Rica. Also present were Larry Scharf (Special Counsel to the United States Attorney) and Richard Gregorie (Chief Assistant United States Attorney).

Feldman explained to them that, while the assassination plot seemed to be fading as a cause for concern or a vehicle for prosecution, the gun-running charges seemed to have some basis in fact. Others at the meeting believed, however, that Feldman was having a difficult time fitting a complex combination of facts, witnesses, and actors into a coherent theory of prosecution.[46]

At one point, the topic of the Boland Amendment was raised. Because no one in the room was familiar with the details of that legislation Barnett asked Assistant United States Attorney David Liewant to locate it with the research computer.[47]

According to Liewant, when he arrived at Kellner's office with the printout, only Kellner, Barnett, and Feldman were present and Kellner was on the telephone talking to someone at the Department of Justice.[48] According to Liewant, when Kellner hung up, he turned to Barnett, Feldman, and Liewant and said that the Department wanted them to "go slow" on the investigation. Liewant could tell from Kellner's expression and tone of voice that Kellner was disdainful of that suggestion and had no intention of actually slowing the investigation.[49]

If Liewant's account of this meeting is correct, the Department of Justice would appear to have been exerting improper influence to delay an investigation, albeit influence brushed aside by Kellner. But each of the other participants in the April 4 meeting deny that any such telephone conversation took place.[50] Richard, Trott, Jensen, and Meese also deny that any telephone call like that described by Liewant occurred or that anyone, to their knowledge, attempted to slow the investigation at any time.[51]

At the end of the meeting on April 4, Kellner asked Feldman to draft a memorandum pulling together the results of the investigation to date as well as Feldman's approach to any possible prosecution.[52]

The Meese Aside

On April 12, Meese, along with Jensen and Revell, arrived in Miami to visit a number of FBI agents wounded in a shoot-out the day before. Kellner accompanied Meese on his visits.[53]

During the day, Meese pulled him aside and asked him about the Garcia investigation. Kellner believes that he told Meese that there did not appear to be much substance to the assassination allegations, but that the gun-running investigation was continuing. Kellner testified that Meese neither stated nor implied that the investigation should be slowed or conducted in any other particular manner.[54]

Meese recalls asking Kellner about the matter, although he does not recall pulling Kellner aside to do so. Meese testified that he mentioned that case in particular because it had received attention by the press.[55] Meese also denies that he attempted to affect the course of the investigation.[56]

The Feldman Memoranda

On April 28, Feldman provided the first in what was to become a series of memorandums to Kellner. Both Feldman and Kellner felt that it was unsatisfactory.[57] On May 14, Feldman therefore produced a more detailed memorandum, 20 pages in length. It reviewed the facts gathered to that time and concluded that it was appropriate to issue grand jury subpoenas for various documents and witnesses. Feldman wrote:

> The Bureau believes that a grand jury is necessary for several reasons. First, it would dispel claims that the Department of Justice has not aggressively pursued this matter. Second, a grand jury would eliminate some of the deception they believe they have encountered during their interviews with Jesus Garcia, Daniel Vasquez Sr., Ronald Boy, and Max Vargas. Finally, the grand jury would give the Department of Justice access to Costa Gun Shop's business records and CANAC's bank records.

Within a few days, Kellner returned the memorandum to Feldman with the notation "I concur, we have sufficient evidence to institute a grand jury investigation into the activities described herein."[58]

Kellner then convened a meeting in his office on May 20 to discuss the case. Present, once again, were Kellner, Barnett, Scharf, Gregorie, and Feldman. As the discussion progressed, Scharf and Gregorie set forth a number of reasons why they believed it premature to issue grand jury subpoenas. Gregorie, at his deposition, summarized those reasons:

> Before you go into the grand jury, as I told Jeff, you have to have some idea where you're going and what you're looking for.

> Up until that time, he had some wild stories that were concocted by freelance newspaper reporters about mercenaries who were unreliable, individuals who had failed a polygraph, people who were unreliable, and we did not have a stage set of facts [sic], and I did not think it was appropriate to go into the grand jury with a bunch of people who we were later going to find out were totally lying and totally misled in a grand jury, going to confuse them.
>
> What I saw was a confused mess of facts that were leading in no particular direction, and had no form or substance to them.[59]

By the end of the meeting, a consensus developed that further interviews should be conducted before resorting to the grand jury. Feldman, who had requested authorization to go to the grand jury initially, acquiesced in the decision and agreed to have the FBI conduct the additional interviews.[60]

After Kellner changed his mind and concluded that grand jury subpoenas would be premature, he asked Feldman to redraft the May 14 memorandum to reflect that conclusion. Feldman did so, and submitted a revised version to Kellner on May 22. Feldman did not change the original date on the revised memorandum.[61]

Kellner asked Scharf to review this new version, and Scharf made a number of changes. Most important, he included a reference to the Christic Institute litigation filed in the Southern District of Florida on May 30 and added to the conclusion a number of reasons why resort to a grand jury would be premature. Scharf had these changes made on a word processor, but did not change the original date or author. As a result, when Kellner submitted the memorandum to the Department on June 3, it still bore the date of May 14 even though it referred to an event that occurred on May 30. Feldman did not see this final version of his memorandum before Kellner sent it on to Washington.[62]

Further Investigation

The FBI agents undertook the additional investigation requested by Feldman. On July 31, 1986, they presented Feldman with a lengthy "prosecution memorandum" that included their most recent findings. Feldman, in turn, forwarded that report to Kellner on or about August 14.[63]

On August 29, 1986, Kellner told Feldman to suspend any further investigation on the matter until he (Kellner) returned from an impending trip to Washington. According to Feldman, Kellner told him that "politics" were involved. Feldman found this statement surprising and disturbing, because it was the first, and only, time Kellner had indicated to him that such considerations were relevant. When Kellner returned from Washington shortly thereafter, he told Feldman to proceed.[64]

Kellner confirmed Feldman's version of this incident. According to Kellner, shortly before he was to leave for Washington he received a letter from John Hull making serious allegations of impropriety by members of Senator Kerry's staff, who were also investigating Garcia's allegations. Hull also had included affidavits from some of the imprisoned mercenaries retracting some of their prior statements regarding gun-running and Contra support. Kellner stated that he feared that he was being put into the middle of a political dispute, and wanted to talk to Mark Richard about the allegations before proceeding further. After that discussion, Kellner immediately authorized Feldman to proceed. Both Feldman and Richard confirmed this explanation.[65]

Meanwhile, Kellner had reviewed the prosecution report cursorily and forwarded it, in mid-August, to Richard Gregorie for his input. On October 6, the day after the Hasenfus crash, Gregorie responded to Kellner that he felt the case was ready to go to the grand jury.[66] The prosecution memorandum then rested again with Kellner, who forwarded his own approval to Feldman in the first week in November—six months after Feldman had first suggested the need for a grand jury. The relative inactivity from mid-August to the first week in November was again frustrating to Feldman and the FBI agents, and was explained by Gregorie and Kellner as due to the general press of other matters.[67]

Upon receiving approval from Kellner, Feldman proceeded with the investigation. The Independent Counsel subsequently declined to take over the case and Feldman was continuing to investigate the matter at the time he was deposed by the Committees.[68]

Reward for a Friend

In one episode, the NSC staff undertook to persuade the Department of Justice to "reward" someone characterized by North as a "friend" who had been convicted of plotting to assassinate a Central American leader. In that episode, the NSC staff's motive appears to have been a desire to prevent disclosure of certain questionable activities.

According to a North PROF to Poindexter, the "friend" was an official in a Central American country with whom North, the U.S. Ambassador, General Gorman, and Dewey Clarridge arranged for bases for the Contras as well as overall logistics, training and support.[69]

This official and other plotters were indicted prior to 1986 for conspiracy to assassinate a Central American leader.[70] Pursuant to a plea agreement, the official pleaded guilty to two felony counts which carried a significant maximum sentence; and he was later sentenced to two shorter, though still significant, prison terms to run concurrently.[71]

At the sentencing hearing, U.S. military officials assigned to the State Department testified on behalf of the official. The court provided that the official could be immediately eligible for parole if so determined by the Parole Commission and recommended he serve his sentence at a minimum security institution. Meanwhile, Assistant Secretary of State Elliott Abrams promised the official's government that he would look into the case.[72]

In a September 17, 1986 PROF message to Poindexter, North noted that the official was under the impression he would serve only a matter of days or weeks at the minimum security institution and then be released.[73] North was concerned that once the official realized he was really going to serve a long sentence, "he will break his longstanding silence about the Nic[araguan] Resistance and other sensitive operations."[74] North noted the next morning he would meet with Oliver Revell, Steven Trott, and Elliott Abrams to explore the possibility of a pardon, clemency, deportation, or sentence reduction. The objective of this exercise, as North put it, was "to keep [the official] from feeling like he was lied to in legal process and start spilling the beans."[75] Admiral Poindexter responded: "You may advise all concerned that the President will want to be as helpful as possible to settle this matter."[76]

Representatives of different agencies of the Administration met to discuss the request for leniency. Deputy Assistant Attorney General Mark Richard attended a meeting where Defense Department representatives argued on the official's behalf. Richard concluded their reasons were not sufficiently specific.[77] No one ever gave a detailed account of what the official had actually done for the United States to deserve leniency. He was always simply described as a "friend of the United States."[78] The State Department agreed with the Department of Justice that the official was a terrorist and should be punished. The CIA did not express an opinion.[79]

At a subsequent meeting in North's office on September 24, 1986, North tried to convince Trott, Revell, C/CATF (CIA) and James Michel, Deputy Assistant Secretary of State, that the official was only tangentially involved in the assassination plot and deserved leniency.[80] Revell disagreed. North asked them to consider recommending a minimum security correctional institution rather than the federal prison to which the official had been assigned, despite the court's recommendation, by the Bureau of Prisons.[81]

In early October, North tried again with the Department of Justice, this time with help from General Gorman and Dewey Clarridge. Also at this meeting were Mark Richard (filling in for Trott), Revell, and Elliott Abrams.[82] North, Gorman and Clarridge all argued for leniency for the official, explaining only that the official was a "friend of the government" who was "always ready to assist us" and "was helpful in accommodating our military."[83] Abrams agreed that the U.S. should do what it could for the official, thereby reversing the State Department's earlier position.[84] According to Richard, he offered to meet with others in the Department and determine whether the Department would oppose the transfer of the official to the minimum security institution.

North's contemporaneous account of that meeting portrayed the Justice Department as more committed to assisting the official. In a PROF note to Poindexter, North indicated that, after the last co-conspirator was convicted and sentenced, the Department of Justice would have the defense attorney file a motion to reduce the sentence to time served and arrange to have General Gorman brief the court *in camera* on the equities. North said Trott and Revell believed this should result in the release and deportation of the official. North suggested that the official's attorney should be discreetly briefed to mollify the concerns of those involved that the official "will start singing songs nobody wants to hear."[85]

Richard soon determined that neither Trott nor Kellner had any objection to redesignating the official to the minimum security institution, as contemplated in the original court's recommendation and made the appropriate arrangements with the Bureau of Prisons.[86]

The Fake Prince

As explained briefly in Chapter 4, an individual named Kevin Kattke contacted North in March or April 1985 about a Saudi "prince" who proposed donating to the Contras approximately $14 million in proceeds derived from the sale of the "prince's" oil. North referred the "prince" to Richard Miller. Miller and the "prince" met regularly over the course of the next several months. The "prince" sought Miller's help in marketing the oil, agreeing to pay Miller $1 million of the profits earned. Miller kept North regularly apprised of his dealings with the "prince", which eventually also included both a proposed gold transaction and assistance in freeing the hostages held in Lebanon.[87] Indeed, Miller saw himself as "an agent working on [North's] behalf" in connection with these activities.[88] Yet while North was attempting to develop the "prince" as an asset in both his Iran and Contra initiatives, the FBI was investigating the "prince" for bank fraud.

From the start, Miller had misgivings about the bona fides of the "prince." He did library research without much success in an effort to establish the "prince's" authenticity. According to Miller, North told him that the CIA had confirmed both the "prince's" identity and the veracity of the "prince's" information about the hostages.[89]

Early in their relationship, the "prince" told Miller that he had information about the hostages in Lebanon that would be useful to U.S. efforts to locate and extricate the hostages. At North's suggestion, Miller related this information to the Hostage Location Task Force, representatives of which met with and interviewed the "prince" in Houston. Miller continued to inform North of the hostage-related information conveyed by the "prince."[90]

In July 1985, North asked a DEA agent (Agent 1)—who was detailed to North in connection with hostage release efforts—to accompany Miller and the "prince" to England to assist the "prince's" entry into the country, if necessary. Agent 1 agreed, and North arranged for payment of his travel expenses.[91]

The three men stayed in London for five or six days. Based on discussions with the "prince" about the situation in the Middle East, Agent 1 concluded that it would be worthwhile to develop the "prince" as a source in the hostage location effort.[92]

In August 1985, the DEA agents embarked on further activities with the "prince." At North's request, they traveled to Geneva from Cyprus to help the "prince" obtain travel papers after his passport had allegedly been stolen. Even with the cooperation of Ambassador Faith Whittlesey, Agent 1 was unsuccessful in obtaining a U.S. passport for the "prince." A week later, however, Agent 1 obtained travel papers for the "prince" issued by another country. Agent 1 remained with the "prince" in Europe for some time thereafter, and paid the "prince's" expenses.[93]

At North's request, Secord met Agent 1 and the "prince" in Geneva in September 1985. After meeting the "prince," Secord expressed to Agent 1 concerns about the "prince's" bona fides.[94]

Meanwhile, during the spring and summer of 1985, the "prince" developed legal problems in the United States. In late spring, the "prince" cashed a $250,000 check at William Penn Bank in Philadelphia, which was returned for insufficient funds. This event resulted in a referral to the FBI's Philadelphia field office for bank fraud charges against the "prince." In connection with the fraud investigation, the FBI's Washington field office was asked to interview both North and Miller.[95]

An FBI agent interviewed North on July 18, 1985. According to the agent, North said that he had referred the "prince" to Miller because it was inadvisable (and potentially unlawful) for an NSC staff person to meet with an individual who planned to contribute funds to the Contras. North further informed the agent that the "prince's" interest in donating to the Contras was discussed by North personally with the President and with Robert McFarlane.[96] North "confidentially" advised the agent that the NSC staff had maintained indirect contact with the "prince" because of the Contras' desperate need for funds.[97]

North specifically requested that attempts by the FBI to interview the "prince" be held in abeyance until after the week of July 22, 1985, because the Congress was expected to approve funding for the Contras that week. After being pressed by the FBI agent, North "backed down" on this request, although he expressed his view that FBI contact with the "prince" prior to the NSC's determination of the "prince's" true intentions likely would eliminate any possibility that the "prince" would aid the Contras. On his departure from North's office, the agent was introduced by North to Adolfo Calero, whom North called the "George Washington of Nicaragua".[98]

After the North interview, the FBI agent attempted to contact Miller, who did not return several of the agent's telephone calls. North called the agent on July 30, 1985, in apparent response to the agent's attempt to reach Miller. North told the agent that Miller and the "prince" were in Europe arranging a transfer of funds from the "prince" to the Contras.[99]

On August 27, the FBI agent finally interviewed Miller, who outlined the history of his contacts with the "prince." Miller mentioned that he knew North, but did not disclose anything to the agent about Nicaragua. In October, Miller was interviewed again by the FBI. During this session, he pledged complete cooperation with the fraud investigation.[100]

During the course of the grand jury investigation of the "prince," North called the FBI's Oliver Revell once again to express concern that Miller might be questioned about confidential governmental matters. North told Revell that Miller was a consultant to the NSC and the State Department on the hostage situation, but did not mention Miller's efforts on behalf of the Contras. At North's request, Revell called the Assistant United States Attorney who was handling the "prince's" prosecution in Philadelphia. Revell related the concern expressed by North, and was assured by the prosecutor that, if Miller testified, he would not be questioned about any hostage-related activities.[101]

According to Miller, he spent approximately $370,000 on the activities involving the "prince." North was aware of and approved these expenditures. On at least three occasions—two of which occurred after Miller agreed to cooperate fully in the investigation of the "prince"—Miller sent travelers checks to the "prince" in Europe.[102] Although the "prince" requested these payments—which totalled $32,500—at least $15,000 was used to finance the DEA hostage rescue operations. North approved all such payments.[103]

These expenditures, however, did not result in monetary loss for Miller. He complained to North of the money that the "prince" had cost him, and North told Miller to take reimbursement for these costs from Contra assistance funds that he had transferred to

Miller's company by Carl "Spitz" Channell's tax-exempt organization.[104]

In the end, it was determined that the "prince" was neither a "prince," nor even a Saudi. He was an Iranian con man, who pleaded guilty to bank fraud charges on the eve of his trial. He now is incarcerated in a federal penitentiary in Texas.[105]

Instigation of Investigations

North attempted to exploit his contacts with the FBI to attempt to instigate or intensify investigations of people and organizations perceived as threats to the Enterprise. He was ultimately assisted in this effort by Richard Secord and Glenn Robinette.

In early 1986, Secord had been the target of allegations that he was running guns and drugs between Central America and the United States. In May 1986, these allegations blossomed into a lawsuit filed in United States District Court for the Southern District of Florida. The lead plaintiffs in the action were reporters Martha Honey and Tony Avirgan, who were represented by the Christic Institute. The defendants included Secord, Thomas Clines, Theodore Shackley, and John Hull.[106]

At some point after the lawsuit was filed, North again contacted Oliver Revell, this time to suggest that the federal government ought to investigate the plaintiffs because he thought they were probably being funded or supported by the Sandinistas. Revell told him that the FBI did not engage in that type of investigation.[107]

On May 9, the FBI interviewed North about alleged measures taken against him. North claimed that his car had been vandalized, he had been followed, and his dog had been poisoned. North also claimed a fake bomb device had been left in his mailbox. He had not kept the device, however, for the FBI to analyze. North told the FBI that he had written down the license number of the car that was used to follow him, but, after several requests from the FBI, he failed to provide it, claiming he lost the number.[108]

The FBI checked with the local police regarding the fake bomb device placed in North's mailbox. North had told them he discarded it before it could be examined. The FBI concluded it was probably a prank rather than a threat.

On June 3, 1986, North met with FBI agents to discuss an investigation they had been conducting into allegations by North that he was the target of politically motivated vandalism and harassment, perhaps by foreign intelligence sources. At this meeting, North expressed his displeasure about the FBI's alleged lack of effort in the investigation. In particular, he complained that the FBI had never contacted an NSC staffer who supposedly was the source of allegations linking North to drug traffic, had not investigated Daniel Sheehan of the Christic Institute, had not interviewed a reporter who claimed North had threatened him, had not examined allegations made by Senator Kerry against North, and had not attempted to interview Senator Durenberger and Representative Hamilton to determine the sources for allegations made against North about which they had raised questions.[109] Despite these complaints, the FBI ultimately closed its investigation after concluding that none of North's complaints could be traced to foreign intelligence sources.[110]

North ultimately hit on a better formula, however, with Secord's assistance. In March 1986, Secord had retained Glenn Robinette, a security consultant and former CIA officer, to conduct a private investigation of some of the individuals ultimately involved in the Honey and Avirgan lawsuit.[111] One of the people Secord singled out for such treatment was Jack Terrell, also known as "Colonel Flaco." Terrell had at one time been a pro-Contra mercenary associated with Tom Posey and CMA. He ultimately became disillusioned with the Contras, however, and began to cooperate with the plaintiffs in the lawsuit. He threatened to testify that North had helped provide secret funding to the Contras and that he, Terrell, had used CMA as a cover from which to carry out CIA-sponsored assassinations.[112]

In mid-1986, the FBI received information from a classified source that pro-Sandinista individuals might have been contemplating an assassination of President Reagan. The FBI suspected that Terrell might be involved and disseminated this information to the CIA, Secret Service, State Department, Department of Justice, and NSC.[113]

Shortly thereafter, on July 15, 1986, Revell received a call from North, who indicated that he knew a person familiar with Terrell's activities and would make his contact available for debriefing.[114] The FBI met that evening with Robinette, North's contact, who told them he had met Terrell on July 11 while posing as an attorney exploring the possibility of collaborating with Terrell on a book, movie, and television program. Robinette, who was in daily contact with Terrell, offered to assist the FBI in gaining information about him.[115]

On July 22, 1986, FBI agents interviewed North. He told them he had heard of Terrell eighteen months earlier when a Contra intelligence officer complained of Terrell's brutality.[116] North claimed he suggested at the time of that incident that local officials should expel Terrell. North stated that he had heard that Terrell had tried to import guns into a Central American country and had claimed to be formerly with U.S. Army Special Forces and the CIA.

The FBI agents asked North about Secord and Robinette. North said Secord ran an import-export business and was a consultant to the Defense Department and emphasized Secord did not work for him. He said Robinette was a security consultant hired by Secord to investigate Terrell. North acknowledged he met with Robinette prior to sending him to the FBI and that Robinette gave him copies of the Terrell manuscript and the other materials Robinette shared with the FBI. North stated that neither he nor his staff was responsible for arming, funding, or administering Contra programs and denied he was involved with covert operations being run from the U.S.[117]

The FBI decided to watch Terrell with Robinette's help. Although Robinette refused to wear a recording device, he reported back to the FBI after he met with Terrell. Shortly thereafter, Terrell went to Miami at the same time President Reagan visited Miami. Agents observed him there and concluded he was not a threat to the President. The FBI then terminated this investigation.[118]

Summary

These seven episodes collectively show how the NSC staff, and North in particular, tried to prevent exposure of the Enterprise by law enforcement agencies. We do not mean to impugn the integrity of the law enforcement officials involved. Suggestions that national security could be compromised, coming from NSC aides, inevitably were given weight by law enforcement officials and led them on occasion to provide information to the NSC staff and to delay investigations. The fault lies with the members of the NSC staff who tried to compromise the independence of law enforcement agencies by misusing claims of national security.

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Chapter 5

1. Rosenblatt Dep., 9/25/87, at 7.

2. von Raab believes that his first contact with North occurred a few months before this conversation. According to von Raab, he received a telephone call from General Singlaub who inquired about a helicopter, the "Lady Ellen," that Customs was detaining enroute to a Central American country. When von Raab informed Singlaub that the helicopter needed a license before it could be released, Singlaub indicated that he would obtain one. Singlaub then suggested that von Raab call North about the matter. When von Raab did so, North told him that the individuals involved with the helicopter were "good guys." Ultimately, Customs issued the appropriate license and released the helicopter. William von Raab, Int., Tower, 2/11/87, N36038-36041.

3. *Id.*

4. Rosenblatt Dep., 9/25/87, at 16. Rosenblatt testified that, "to the best of [his] recollection," North did not mention any involvement of Richard Secord with the aircraft in question. Rosenblatt Dep., 9/25/87, at 13. A North note dated "27 Aug," raises questions because of the following entry: "Bill Rosenblatt - Customs - DOJ observed CBS film - Secord involved - DOJ asked Customs to look into [this?] - Agent preparing to subpoena Maule records - If this is for a "right organization" - 2 to 4 have already gone - Joe Tost/ Justice - U.S. Attorney on this - Need docs on who air planes went to and what was on them - Foreign Assets Control." North Notebook, 8/27/86, Q2369.

5. Rosenblatt Dep., 9/25/87, at 12.

6. *Id.*, at 17-21.

7. *Id.*, at 16-17.

8. *Id.*, at 90-93.

9. *Id.*, at 96-99.

10. *Id.*, at 32, 99.

11. *Id.*, at 35.

12. North Notebook, 11/19/86, Q2634. The entry relating to the "C-123" may refer to a requirement that the Hasenfus air plane have a "sojourn permit" before it left the United States. "Ladodge" may be a reference to Larry LaDodge, the Customs agent in charge of the Kelso matter.

13. Rosenblatt Dep., 9/25/87, at 51.

14. *Id.*, at 48-49.

15. *Id.*

16. *Id.*

17. *Id.*, at 60-62.

18. *Id.*, at 54-57.

19. *Id.*, at 55-56.

20. *Id.*, at 57-58, 62-63. North was not questioned on this matter.

21. *Id.*, at 62-69.

22. Currier Dep., 5/5/87, at 6-7.

23. *Id.*, at 8-9, 11; Feldman Dep., 4/30/87, at 5, 8-9.

24. Currier Dep., 5/5/87, at 12-14; Feldman Dep., 4/30/87, at 12-15. "CMA" originally stood for "Civilian Military Assistance." In April 1986, it was changed to "Civilian Materiel Assistance." Posey Dep., 4/23/87, at 7.

25. Kiszynski Dep., 5/5/87, at 11-12; Currier Dep., 5/5/87, at 12-14; Feldman Dep., 4/30/87, at 16. A polygraph examination conducted on January 14 did nothing to bolster Garcia's credibility. The test was "inconclusive" on whether Garcia was telling the truth about a key meeting where the assassination plot was supposedly discussed, and labelled him "deceptive" on his allegations about Posey's involvement. Currier Dep., 5/5/87, at 14; Kiszynski Dep., 5/5/87, at 14; Feldman Dep., 4/30/87, at 17-18. In his sworn testimony to the Committees, Posey vigorously denied Garcia's allegations. Posey Dep., 4/23/87, at 72, 77, 84-85, 89.

26. Currier Dep., 5/5/87, at 16; Feldman Dep., 4/30/87, at 21-22.

27. Allegations about North's own involvement in Contra resupply efforts had been reported in the press as early as the summer of 1985. See, e.g. "Private Sources Are Used to Skirt Ban on Contra Aid," Miami Herald, June 24, 1985, at 1A; "Nicaraguan Rebels Getting Advice from White House on Operations," New York Times, August 8, 1985, at A1.

28. Currier Dep., 5/5/87, at 16-18; Kiszynski Dep., 5/5/87, at 13-14.

29. Feldman Dep., 4/30/87, at 26; Kellner Dep., 4/30/87, at 7. The Committees have not been able to establish with any certainty the trigger for this inquiry from Washington. Kellner believes the call came from Mark Richard, Deputy Assistant Attorney General for the Criminal Division, and had been sparked by a letter from Garcia's wife that had found its way to Richard's desk. Richard, on the other hand, does not recall being aware of the investigation until some time later in March, when he received a "buck slip" on the matter from Steven Trott, then Assistant Attorney General for he Criminal Division. Kellner Dep., 4/30/87, at 7-8; Richard Dep., 8/19/87, at 53-54.

30. Feldman Dep., 4/30/87, at 26-27, 37. Garcia's sentencing proceeding had been scheduled for March 19, 1986. On March 18, Feldman filed a motion to continue this proceeding for 30 days, alleging that the day before, "at approximately 4:30 p.m., the United States Attorneys Office for the Southern District of Florida was requested by the Department of Justice to seek a continuance of the sentencing hearing." J19348. No one is quite certain, however, who made or even who received this request. Kellner Dep., 4/30/87, at 9-11; Feldman Dep., 4/30/87, at 31-32; Richard Dep., 8/19/87, at 71-73.

31. Currier Dep., 5/5/87, at 38-40; Kiszynski Dep., 5/5/87, at 21-22.

32. Jensen Dep., 7/6/87, at 48-49.

33. *Id.*, at 48; Ex. EM73. Because the investigation remains an open matter, the memorandum's contents are classified in their entirety.

34. Jensen Dep., 7/6/87, at 54. Jensen, Trott, and Richard all contend that the sensitive nature of the investigation, its international overtones, and the possible danger to Ambassador Tambs made an NSC briefing advisable. They also concur that the level of supervision exercised by the Department of Justice was consistent with the nature of the investigation. Jensen Dep., 7/6/87, at 48, 53, 55; Trott Dep., 7/2/87, at 87; Richard Dep., 8/19/87, at 87. Jensen explained that he briefed only the NSC on this matter because Revell's memorandum, which remains classified, indicated that the CIA and the State Department were already being briefed. Jensen Dep., 7/6/87, at 55-57. At his deposition, Meese could not think of anything about the case that merited a special briefing of the NSC. Meese Dep., 7/8/87, at 227.

35. Meese Dep., 7/8/87, at 221.

36. Ex. EM73.

37. Ex. EM73.

38. Richard Dep., 8/19/87, at 68-70, 87, 92-93; Trott Dep., 7/2/87, at 9; Jensen Dep., 7/6/87, at 57-59.

39. Jensen Dep., 7/6/87, at 60-61; Poindexter Test., 7/21/87, at 180-81.

40. Feldman Dep., 4/30/87, at 37-38.

41. *Id.*, at 47-50.

42. *Id.*, at 56-59.

43. *Id.*, at 56-59. Although Hull told Feldman he had not spoken to anyone at the embassy before he cancelled the interview, Kirt Kotula, an embassy official, told Feldman that he had, in fact, spoken to Hull and advised him of his right to counsel. Feldman Dep. 4/30/87, at 58-61.

44. Feldman Dep., 4/30/87, at 60-61.

45. Exhibit TC15. Castillo has testified that he never discussed the investigation with Owen. Castillo Test., 5/29/87, at 158, 192, 197 (Executive Session). He was uncertain whether he had ever discussed the investigation with North. Castillo Test., 5/29/87, 154-58 (Executive Session). North's notes suggest that he was advised of the investigation by Castillo. In an entry dated "31 Mar 86," North wrote: "1700—call from [Thomas [Castillo?]] * * * - Asst. U.S. Attorney/2 FBI + Resident Agent - Rene Corbo - Terrell (Flaco) - CMA - Guns to [a Central American location]. North Notebook, 3/31/86, Q 2078.

46. Feldman Dep., 4/30/87, at 68-71; Barnett Dep., 7/17/87, at 27-31; Scharf Dep., 7/17/87, at 31; Gregorie Dep., 7/17/87, at 12-15.

47. Barnett Dep., 7/17/87, at 33-34.

48. Testimony by all the other participants in the meeting indicates that Scharf and Gregorie were also in Kellner's office when Liewant arrived. Scharf Dep., 7/17/87, at 15-17; Gregorie Dep., 7/17/87, at 15-20; Kellner Dep., 4/30/87, at 17-20; Feldman Dep., 4/30/87, at 68-70; Barnett Dep., 7/17/87, at 38-41.

49. Liewant Dep., 6/2/87, at 9-14.

50. Barnett Dep., 7/17/87, at 38-41; Scharf Dep., 7/17/87, at 15-17; Gregorie Dep., 7/17/87, at 15-20; Kellner Dep., 4/30/87, at 17-20; Feldman Dep., 4/30/87, at 68-70.

51. Richard Dep., 8/19/87, at 92-93; Trott Dep., 7/2/87, at 9; Jensen Dep., 7/6/87, at 58-59; Meese Dep., 7/8/87, at 222. Nor do the incomplete telephone records available to the Committees reflect any calls from the Department of Justice to Kellner on the afternoon of April 4. Because the federal government uses a separate network, "FTS," for intra-governmental telephone calls, commercial toll records are not useful. The General Services Administration, which maintains and monitors the FTS network, routinely records information for only 20% of the calls made on the network. A review of these records for April 1986 reveals a call on April 4 from the Office of the Deputy Attorney General to the Office of the United States Attorney for the Southern District of Florida. The call took place at 11:33 a.m. and lasted only 1 minute. It was, therefore, too early and too brief to be the call described by Liewant, J20977-J21016. This evidence is not, of course, conclusive, since the call described by Liewant could have originated in Miami or could have been among the 80 percent originating at the Department of Justice but not recorded.

52. Feldman Dep., 4/30/87, at 69.

53. Kellner Dep., 4/30/87, at 25-27. There are conflicting accounts as to who rode in what cars with whom. Compare Kellner Dep., 4/30/87, at 26-27; Jensen Dep., 7/6/87, at 63-64; Meese Dep., 7/8/87, at 225.

54. Kellner Dep., 4/30/87, at 28-33.

55. The Miami News had run a story the day before describing certain aspects of the investigation. See "U.S. Probes Reports of Smuggling for Nicaraguan Rebels," The Miami News, 4/11/86, at 1; Feldman Dep., 4/30/87, at 70.

56. Meese Dep., 7/8/87, at 219-22.

57. Feldman Dep., 4/30/87, at 76-77.

58. *Id.*, at 78-80, J19450.

59. Gregorie Dep., 7/17/87, at 31-33.

60. Feldman Dep., 4/30/87, at 81-83; Kellner Dep., 4/30/87, at 46.

61. Feldman Dep., 4/30/87; Kellner Dep., 4/30/87, at 47.

62. Feldman Dep., 4/30/87, at 92-95; Scharf Dep., 7/17/87, at 53-58; Kellner Dep., 4/30/87, at 47-49. This last version, including Scharf's changes, was ultimately leaked to the news media. Feldman Dep., 4/30/87, at 96-98.

63. Feldman Dep., 4/30/87, at 102-03; Currier Dep., 5/5/87, at 47-48; Kiszynski Dep., 5/5/87, at 31-33.

64. Feldman Dep., 4/30/87, at 104-09.

65. Feldman Dep., 4/30/87, at 104-09; Kellner Dep., 4/30/87, at 57-70; Richard Dep., 8/19/87, at 87-90.

66. Gregorie Dep., 7/17/87, at 39; Feldman Dep., 4/30/87, at 115. The Hasenfus crash took place on October 5, 1986.

67. Feldman Dep., 4/30/87, at 108-10; Currier Dep., 5/5/87, at 49; Kellner Dep., 4/30/87, at 116-17; Gregorie Dep., 7/17/87, at 44.

68. Feldman Dep., 4/30/87, at 110.

69. North PROF Note to Poindexter, 9/17/86, N12602.

70. Memorandum from John L. Martin to William Weld, 9/30/86, J4627-28.

71. *Id.*

72. Draft State Dept. cable from Deputy Assistant Secretary James Michel to Legal Attache in a Central American country, 9/24/86, J4618-21.

73. North PROF Note to Poindexter, 9/17/86, N12602.

74. *Id.*

75. *Id.*

76. Poindexter PROF Note to North, 9/17/86, N12604.

77. Richard Dep., 8/19/87, at 122, 126, 132.

78. *Id.*, at 132.

79. *Id.*, at 121-23.

80. Trott Dep., 7/2/87, at 78.

81. Richard Dep., 8/19/87, at 126-28.

82. *Id.*, at 124.

83. *Id.*, at 126-27. Gorman, however, testified that there was discussion that the official may start to talk and reveal sensitive matters the U.S. would prefer remain secret. Gorman maintained he "was prepared to believe that the official might engage in all kinds of outrageous representations." In Gorman's view, however, these sensitive matters did not pertain to questionable Contra-support activities. Memorandum (5/19/87) of Interview (4/16/87) with Gorman, at 12-14.

84. Richard Dep., 8/19/87, at 127.

85. North PROF Note to Poindexter, 9/18/86, N12603.

86. Richard Dep., 8/19/87, at 129-30.

87. R. Miller Dep., 8/21/87, at 381-90.

88. North 's notes demonstrate the regularity with which Miller spoke with North about the "prince." These notes refer to the "prince" by his code name, "Jewell." (See e.g., North Notebook, Q1798, Q1858, Q1930.) R. Miller Dep., 8/20/87, at 98-99.

89. R. Miller Dep., 8/21/87, at 390-93.

90. *Id.*, at 377-78.

91. *Id.*, at 393-94; Agent 1 Dep., 8/12/87, at 102-03, 112.

92. Agent 1 Dep., 8/12/87, at 105-06.

93. *Id.*, at 106-10.

94. *Id.*, at 114-16.

95. James Kramarsic Int.

96. McFarlane flatly denied that North had discussed the "prince" with him. McFarlane Test., 5/11/87, at 95-96.

97. Kramarsic Int., Exhibit OLN264.

98. Kramarsic Int., Exhibit OLN264.

99. Kramarsic Int., Ex. OLN265. According to Miller, he unsuccessfully had attempted to contact the FBI agent when he learned of the investigation from North. R. Miller Dep., 8/21/87, at 396-97.

100. Kramarsic Int.; FB2715-20.

101. Revell Dep., 7/15/87, at 83-89; Nicholas Harbist Int., 6/4/87.

102. A portion of these payments was used by DEA agents with whom the "prince" was traveling. R. Miller Dep., 8/21/87, at 378-79.

103. R. Miller Dep., 8/21/87, at 405-06.

104. *Id.*, at 406-07; see Chapter 4.

105. Nicholas Harbist Int., 6/4/87.

106. Amended Complaint, Avirgan, et al. v. Hull, et al., No. 86-1146 (S.D., Fla., filed Oct. 3, 1986).

107. Revell Dep., 7/15/87, at 36.

108. FBI Teletype, 5/16/86, from Washington Field Office to Intelligence Division, FBI Headquarters, at 1-2, FB2983-86.

109. FBI Teletype, June 11, 1986, from Washington Field Office to Intelligence Division, FBI Headquarters, at 3-5, FB 2977-82.

110. FBI teletype, June 11, 1986, from Washington Field Office to Intelligence Division, FBI Headquarters, FB 2977-82.

111. Robinette Dep., 1/17/87, at 5-7.

112. Terrell had been interviewed by Assistant United States Attorney Jeffrey Feldman in connection with the investigation being conducted into alleged violations of the Neutrality Act and an alleged plot to assassinate Ambassador Lewis Tambs. FBI Form 302, Subj: interview of Terrell, dated 7/16/86. Of Terrell's allegations about Posey and the plot to assassinate Tambs, Posey said Terrell "is full of bull." Posey Dep., 4/23/87, at 89.

113. Revell Dep., 7/15/87, at 25-28.

114. Revell Dep., 7/15/87, at 26.

115. Robinette Int., 6/15/87, at 13-14. FBI 302 Report, 7/16/86. See also WFO 2 488-1 and 199C-4773.

116. FBI form 302, Subj: Interview of Oliver North, dated 7/22/86, FB3256-58.

117. FBI form 302, Subj: Interview of Oliver North, dated 7/22/86, FB3256-58.

118. Revell Dep., 7/15/86, at 27, 32.

Chapter 6

Keeping "USG Fingerprints"* Off The Contra Operation: 1984-1985

In October 1984, the President signed into law a version of the Boland Amendment barring the Central Intelligence Agency, the Department of Defense, and "any other agency or entity of the United States involved in intelligence activities" from providing support to Contra military activities. Explaining the statute on the floor of the House of Representatives immediately before its passage, Representative Edward P. Boland, then Chairman of the House Permanent Select Committee on Intelligence, was clear about the legislation's intent: the provision "ends U.S. support for the war in Nicaragua."[1] National Security Adviser Robert C. McFarlane acknowledged that intent: "the Boland Amendment governed our actions," he told these Committees.[2] Although Congress eventually approved humanitarian aid for the Contras and authorized intelligence sharing, the full prohibition on lethal support remained in effect until October 1986.

Despite the Boland Amendment's prohibition, U.S. support for the Nicaraguan Resistance continued. As set forth fully in Chapters 2 and 3, members of the National Security Council staff—with help from officials of other Government agencies—supervised a covert operation supporting the Contras. They provided weapons and military intelligence to the Resistance and resupplied troops inside Nicaragua, using funds raised from foreign countries, private citizens, and ultimately the Iranian arms sales. They did so despite the unambiguous intent of Congress that the U.S. Government, including the NSC staff, could not aid the Contras' military effort.

Secrecy, therefore, was vital to the success of the Contra operation. Disclosure of U.S. support, Oliver North wrote to John Poindexter in May 1986, "could well become a political embarrassment for the President and you." [3] Moreover, disclosure would surely doom the project. Poindexter told these Committees: "It was very likely if it became obvious what we were doing that Members of Congress would have maybe tightened it [the law] up. I didn't want that to happen." [4]

But just as secrecy was vital to the operation's success, even limited success jeopardized that secrecy. As the Contras continued to purchase supplies and equipment despite the cut-off of aid, Congress and the media inquired, inevitably, about the sources of Resistance support and funding.

Officials involved in the Contra support operation took every precaution to ensure that the project remained secret. They withheld the facts from some Administration officials who spoke out frequently on U.S. policy in Central America, forcing them to mislead Congress and the American people. They discouraged reporters from pursuing the link between the NSC staff and the Contras. And they responded to direct inquiries with half truths and false statements.

1983–1984: Suspicions, and the "Casey Accords"

Even before the full-prohibition Boland Amendment was enacted in October 1984, Members of Congress were concerned that the Administration was not providing sufficient information about the covert program in support of the Nicaraguan Resistance.

In April 1983, Senator Daniel Moynihan, Vice-Chairman of the Senate Select Committee on Intelligence, spoke of a "crisis of confidence" between Congress and the intelligence agencies running the operation.[5] A year later, Committee Chairman Barry Goldwater rebuked the CIA in the wake of the revelations related to Nicaragua harbor mining. He wrote to CIA Director William Casey: "[W]e were not given the information we were entitled to receive." [6] Expressing the sense of many in Congress, Goldwater said at an Intelligence Committee hearing: "We cannot play guessing games with the intelligence community if the relationship between legislative and executive branches is to work." [7]

After the mining incident became public in April 1984, Director Casey was called before an extraordinary secret session of the Senate—60 Members were present—to explain the failure to consult adequately ahead of time. The Director apologized at the session, and promised a new spirit of cooperation.[8] The promise would soon be formalized in what became known as the "Casey Accords," an agreement between the CIA and the Senate Intelligence Committee on consultation guidelines for covert operations. Under the agreement, the CIA would share explanatory material outlining the exact nature, goals, and risks of the covert operation. The CIA would also give prior notice of any "significant, anticipated intelligence activity," even if the planned activity was part of an ongoing covert operation.[9]

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* North's term used in two PROF notes to Poindexter dealing with the possible disclosure of the U.S. Government link to the Contra operation. [Exhibits OLN-131 and OLN-307, Hearings, 100-7, Part III.]

The accords reflected the recognition that cooperation and forthrightness on covert activities were essential in the relationship between the Executive and Congress. But the subsequent actions of Casey and members of the NSC staff did not reflect that recognition.

1984: Testimony Before Congress on Third-Country Assistance

In December 1983, the President signed into law legislation limiting funding for the Contras in fiscal year 1984 to $24 million.[10] The limit was the result of a compromise between the House, which hoped to curtail support for the Contras, and the Senate, which favored continuing the aid. Explaining the compromise on the floor of the House, Representative Boland said the $24 million, which would likely run out by June 1984, represented a "cap on funding from whatever source."[11] Representative J. Kenneth Robinson, the ranking Republican on the House Intelligence Committee, said that the $24 million compromise meant "no additional funding could be made available" for the Nicaraguan Resistance "unless additional authorization and/or appropriations are approved by both Houses."[12]

The Administration, however, sought funding for the Contras beyond the $24 million appropriation. On several occasions in 1984, officials tried to obtain aid for the Contras from third-country sources. Those attempts occurred as early as February, when the Administration began to suspect that Congress was not likely to approve supplemental funding for the Contras when the $24 million ran out.[13] Shortly thereafter, McFarlane sought to obtain equipment, materiel and training for the Contras from Country 1.[14]

In a March 27, 1984, memo, CIA Director Casey urged McFarlane to proceed with his plans to obtain aid from Country 1, and told him that the CIA was working along a second track to obtain assistance from that Country. Casey added in the memo that the CIA also was exploring "the procurement of assistance from [Country 6]." That country had "indicated" that it might make "some equipment and training available" to the Contras.[15] Country 1 rejected McFarlane's approach, and the advance to Country 6 was called off, in part because of the revelations in April relating to the Nicaraguan harbor mining.[16]

As McFarlane testified, those revelations left a "zero probability" that Congress would provide supplemental funding for the Contras, "and no amount of wringing our hands was going to change that."[17] In May or June, the National Security Adviser obtained a $1 million-a-month donation from Country 2, and informed the President, who expressed "satisfaction and pleasure" with the gift. McFarlane testified that he also shared the news with the Vice President.[18]

McFarlane informed the President of the donation using a notecard. He rejected the option of telling the President about the gift at a morning briefing because "there could be . . . as many as ten people in the room [and] I simply didn't know for sure who would be there."[19]

In order to further ensure that the new Contra funding remained secret, McFarlane did not share details of the gift with the Secretaries of State or Defense. McFarlane, who acknowledged that he regarded the Country 2 contribution as a secret to be closely held, testified he told them in vague terms that the Contras "had been provided for through the end of the year."[20] Neither Secretary of State Shultz nor Secretary of Defense Weinberger recall receiving any information on third-country funding until later.[21]

McFarlane also instructed North not to share news of the new funding with anyone; indeed, according to North, McFarlane never told him which country had contributed.[22] North, in turn, instructed Contra leader Adolfo Calero: "never let agency [CIA] know of amt, source, or even availability [of the funds]. . . . No one in our govt. can be aware. . . . Your organization must not be fully aware."[23]

Stories about the third-country contacts soon began appearing in the media. In mid-April 1984, The Washington Post quoted anonymous sources speculating that third countries might be persuaded to provide money for the Contras.[24] Administration officials were quoted in the story as flatly denying that the United States would approach foreign countries for assistance.[25] In an article 4 days later discussing upcoming U.S.-Israeli talks on Israeli assistance to Central American countries, The Washington Post quoted State Department spokesman John Hughes as saying, "The United States has no intention of using third countries to finance covert action in Central America."[26] Although Hughes was not aware, his denial came at a time when the CIA and NSC staff were continuing their attempts to obtain third-country support.

Prompted by the reports, the House Permanent Select Committee on Intelligence requested an appearance on May 2 by CIA Director Casey and Kenneth W. Dam, then Deputy Secretary of State. The testimony occurred about 5 weeks after Casey had sent the memorandum to McFarlane outlining the CIA's efforts to obtain lethal assistance for the Contras from Country 1 and Country 6 and indicating

Casey's awareness of McFarlane's attempt to obtain assistance from Country 1. Coming only days after he had pledged to be fully candid with Congress, Casey's testimony was inconsistent with his memorandums:

> STOKES: . . . There has been some talk in the media with reference to [Country 1] or [Country 2] being alternative funding sources. What can you tell us about that?
>
> CASEY: Well, there has been a lot of discussion. We have not been involved in that at all.
>
> FOWLER: Who has?
>
> CASEY: I do not know.[27]
>
> * * *
>
> FOWLER: . . . Is any element of our Government approaching any element of another Government to obtain aid for the Contras?
>
> CASEY: No, not to my knowledge.[28]

Kenneth Dam acknowledged to the Committees that "there have been conversations with [Country 1]" about aid to the Contras and explained that those talks had led nowhere.[29] He also said that there had been no "high level" approach to Country 2.[30] Asked about Administration activities, Dam denied that the U.S. Government was approaching other countries for assistance:

> FOWLER: . . . Is the Administration actively looking for help, either in funding or in tactical aid to our [Contra] operation?
>
> DAM: . . . We are not making approaches to other Governments. So it is clear—you know, when you say 'actively' I do not know what is going on in terms of people's minds or conversations among people within the executive branch. We do not have a program of approaching other governments for support, and we are not doing so.
>
> FOWLER: . . . We want to know whether or not in light of serious questions about the Congress' willingness to continue this funding, whether or not our Government in all of its ramifications is looking for help, both in funding and the possibility of some tactical or strategic or geopolitical—whatever you want to call it—help to our operations and policy in Nicaragua.
>
> DAM: All I can do is answer precisely, and that is what I am trying to do. We have no program of approaching other Governments. We are not currently approaching other Governments on this subject. I am not going to tell you we will not sometime in the future. We do not see this as a realistic approach. We do not see this as a solution, and I think that is a very precise answer.[31]

Dam's denials accurately reflected State Department policy but not Administration activities. There is no evidence that Dam was aware of the Casey and McFarlane third-country efforts or that he did not make his statements in good faith. However, Casey, who knew at least about the approaches to Countries 1 and 6, did not correct Dam's statements.

With the help of the Country 2 donation, the Contras survived beyond the summer of 1984, when their Congressionally approved $24 million allotment had been exhausted. The donated funds began to flow in July, and by September 4 the Contras had received $3 million.[32] By then, Oliver North also had called on Richard Secord to purchase weapons for the Contras.[33]

On September 9, two major newspapers, The New York Times and the Miami Herald, published reports suggesting that third countries and private U.S. citizens had replaced the CIA in providing aid to the Contras.[34] The reports prompted another Congressional inquiry. Three days after the stories appeared, the House Intelligence Committee called officials from the CIA and the State Department to appear before it. Members assumed that these officials—Dewey Clarridge, the CIA's Latin American Division Chief, and Ambassador Anthony Langhorne Motley, Assistant Secretary of State for Inter-American Affairs—would know whether the reports were true or false.[35]

Clarridge told the Members that the CIA believed the Contras had been receiving about $1 million per month[36]—precisely what Country 2 had provided. He added, however, "We know of no place or no country that has supplied any funds in any real amount."[37] Motley, who had not been informed of the contribution from Country 2, testified:

> FOWLER: Are we, is the United States of America, soliciting help for the Contras?
>
> MOTLEY: No. No.
>
> FOWLER: In other countries?
>
> MOTLEY: No.
>
> FOWLER: Are we encouraging other countries to participate?
>
> MOTLEY: No, no, and that's a very good point.
>
> FOWLER: Are we under any negotiations or discussions with any other countries to aid these efforts?
>
> MOTLEY: No.[38]

Motley explained the "decision" made on this issue by senior Administration officials. As the $24 million was running out, he said, the Administration decided that even though third-country solicitation was still "technically" permitted, a "feeling of mistrust" existed, and "in that context it was decided that we would not encourage and that we would not facilitate either other governments or in private groups within the United States. And to my knowledge, that has been honored."[39]

Committee member Wyche Fowler, Jr., responded that he had "a hard time believing . . . that our government does not know" how the Contras were surviving.[40] Indeed, the President, the Vice President, and the National Security Adviser knew that Country 2 had made a substantial donation to the Contras.

Early 1985: The Second Country 2 Contribution

In February 1985, the Administration obtained an additional donation from Country 2. A $5 million deposit was made on February 27, 1985; by the end of March 1985, the amount totaled $24 million, bringing the total donation from that country to about $32 million.[41] Again, officials took steps to ensure that the funding remained secret.

McFarlane withheld information about the new donation from two likely recipients of Congressional inquiries on the subject of U.S. support for the Contras: Secretary of State Shultz and CIA Director Casey.[42] The President did not tell Shultz either, even though he briefed the Secretary on his meeting with the donor country's head of state shortly after that meeting.[43] Shultz testified: "I don't think he [the President] is out to deceive me."[44] (Secretary of Defense Weinberger, along with the Chairman of the Joint Chiefs of Staff, found out about the donation independently.[45])

About Shultz, McFarlane testified that he "shared virtually everything—I think indeed everything—with the Secretary of State that I would learn of relevance."[46] Asked whether the reason he did not tell Secretary Shultz was "for his benefit, not for yours," McFarlane said yes.[47] McFarlane further explained: "I am guessing that it [not telling Shultz] was probably out of concern for further dissemination and compromise of that relationship, and damage and embarrassment."[48] State Department and CIA officials had been frequently questioned about the sources of Contra funding in 1984. And McFarlane's decision not to tell Secretary Shultz about the donation came shortly after The Washington Post publicized correspondence between Representative Joseph P. Addabbo, the former Chairman of the Defense Subcommittee of the House Appropriations Committee, and the State Department. In a December 11, 1984, letter, Addabbo had asked Shultz whether some countries receiving U.S. foreign assistance had diverted some of those funds to the Contras. The State Department replied negatively one month later, and the correspondence was the subject of an article on January 23.[49]

Like McFarlane, North took action in February 1985 to prevent disclosure of U.S. Government activities in support of the Contras. In a letter addressed to Calero about the new large donation, North revealed his intention to conceal facts from Congress:

> Please do not in any way make anyone aware of the deposit. Too much is becoming known by too many people. We need to make sure that this new financing does not become known. The Congress must believe that there continues to be an urgent need for funding.[50]

Within weeks of the new donation, Assistant Secretary Motley was called to testify before the Senate Committee on Foreign Relations. On March 26, 1985, Senator Christopher Dodd asked about "a number of rumors or news reports around this town about how the Administration might go about its funding of the Contras in Nicaragua. There have been suggestions that it would be done through private groups or through funneling funds through friendly third nations, or possibly through a new category of assistance and asking the Congress to fund the program openly." Motley replied that the Boland Amendment prohibited "any U.S. assistance whether direct or indirect, which to us would infer also soliciting and/or encouraging third countries; and we have refrained from doing that because of the prohibition."[51]

Senator Dodd pursued the matter further:

> DODD: Well, that aside, looking at these resolutions, there are always clever ways of discovering something that may have been omitted. All I am asking from you is, and from the Administration more directly, is whether or not we can have an assurance that there will be no indirect efforts made to finance the Contra operation through third party nations or through other vehicles within the foreign aid authorization to finance this operation, that you will proceed pursuant to the resolution as adopted on the continuing resolution.
>
> MOTLEY: I think that was one thing that was loud and clear with us when I started. I told you that we understand what it means, direct and indirect, including third party. We take it to the letter of the law at its most liberal interpretation. And I can assure you that we have done it in the past. You want my assurances that we will continue to do it in the future, and if you feel that is necessary, I will so give it to you.
>
> DODD: We have that assurance, then.

MOTLEY: That is right.[52]

After Senator Dodd referred to the availability of possible loopholes, Ambassador Motley responded:

> We are going to continue to comply with the law. I am not looking for any loopholes. . . . Nobody is trying to play games with you or any other Member of Congress. That resolution [the Boland Amendment] stands, and it will continue to stand; and it says no direct or indirect. And that is pretty plain English; it does not have to be written by any bright, young lawyers. And we are going to continue to comply with that.[53]

Again, Motley was not informed that the Administration had obtained the donation from Country 2, that the National Security Adviser and the CIA had sought assistance from other countries, or that the NSC staff had begun to supervise the covert Contra operation out of its offices.

Casey Briefing of Senate Intelligence Committee

In late 1984 and early 1985, North sent CIA intelligence information to the Contras through Robert Owen.[54] The CIA Chief of the Central American Task Force (C/CATF), who ordinarily passed that information to North, denied to these Committees that he knew intelligence was being transmitted by North via Owen to the Contras.[55] On April 17, 1985, CIA Director Casey, accompanied by Deputy Secretary of State Dam, briefed the Senate Intelligence Committee on intelligence operations in Nicaragua. Casey told Committee members that, apart from intelligence which might jeopardize the lives of Americans, "we've kept out of any intelligence exchange . . . . We haven't been providing intelligence."[56]

Prior to the date of the briefing, North had obtained Richard Secord's assistance to purchase weapons for the Contras with the funds donated from Country 2. North testified that Casey suggested Secord for this purpose.[57] However, Casey assured the Members that "over the past year, we strictly honored in practice and in spirit the Congressionally mandated restrictions on military aid to the Contras."[58] He testified:

> CASEY: [W]e have carefully kept away from anything which would suggest involvement in their activities which have been carried on quite effectively and with considerable success in getting support and getting weapons and getting ammunition on their own. They've gone into the international arms markets. We know that from lots of sources that they were buying things from other countries and bringing in ammunition and been raising money. But we don't have any idea as to the quantity, what they got in the pipeline or—
>
> CHAIRMAN: That's all I wanted to establish.[59]

Deflecting Media Inquiries

By June 1985, reporters were close to establishing a link between the NSC staff and Contra support. A June 3 memo from North to Poindexter illustrates North's efforts to discourage reporters from pursuing the story. North boasted in the memo that at his request, Adolfo Calero told Alfonso Chardy of the Miami Herald "that if he (Chardi) [sic] printed any derogatory comments about the FDN or its funding sources that Chardi [sic] would never again be allowed to visit FDN bases or travel with their units." North added: "At no time did my name or an NSC connection arise during their discussion."[60]

North and retired Major General John K. Singlaub had already devised a plan to divert press attention away from the NSC staff's Contra operation, which by then was being coordinated under North by Richard Secord, Richard Gadd, and their employees. North encouraged Singlaub to court the media, realizing that, as Singlaub put it, "If I [Singlaub] had high visibility, I might be the lightening rod and take the attention away from himself [North] and others who were involved in the covert side of support."[61]

The plan seems to have had some success. Shortly after his discussion with North, Singlaub was the subject of a long article in The Washington Post connecting him to support for the Contras,[62] and in the coming months, he would be featured in virtually all the major newspapers. Although North himself soon would be the subject of press reports, Secord was not mentioned in the media until mid-1986, and details of North's resupply operation were not revealed until the plane carrying Eugene Hasenfus was shot down in October 1986.

June-August 1985: Press Reports on NSC Staff and Contra Support

By April, third-country funding had not only sustained the Contras but had "allowed the growth of the Resistance from 9,500 personnel in June 1984 to over 16,000 today—all with arms," according to an April 11, 1985, memo from North to McFarlane.[63] During May, according to a May 31 memo, "the Nicaraguan Resistance recorded significant advances in their struggle against the Sandinistas."[64]

In June, reporters first linked the Contras' success with North. By mid-August, most major news organizations had published or broadcast reports on this "influential and occasionally controversial character in the implementation of the Reagan Administration's foreign policy."[65]

News stories in June 1985 explored the sources of Contra funding. On June 10, the Associated Press distributed an article by Robert Parry suggesting that the White House had lent support to private fundraising efforts. The article named North as the White House contact for such efforts, which according to the report, revolved around John Singlaub.[66]

Two weeks later, the Miami Herald reported that the Administration "helped organize" and continued to support "supposedly spontaneous" private fundraising efforts. The article quoted extensively from ousted Nicaraguan Democratic Force (FDN) leader Edgar Chamorro, who described a trip by North and a CIA officer to a Contra base in the spring of 1984. North and the CIA officer assured the rebels, according to the article, that the White House would "find a way" to keep the movement alive. Neither North nor the CIA officer specifically promised private aid, although "it was clear that was their intent," Chamorro was quoted as saying.[67]

In August, reports in The New York Times, The Washington Post, and other major newspapers asserted that White House support for the Contras involved more than fundraising. Oliver North had given the Contras "direct military advice" on rebel attacks, exercising "tactical influence" on military operations, The New York Times reported. The newspaper reported that North had also "facilitated the supplying of logistical help" to the Contras, filling in where the CIA could no longer help. The information was attributed to anonymous "administration officials."[68]

Denials

The day after this story appeared, President Reagan responded to the allegations. "[W]e're not violating any laws," the President said as he signed legislation providing $27 million in humanitarian aid for the Contras and authorizing the exchange of intelligence.[69] In a statement released later that day, the President added that he would "continue to work with Congress to carry out the program as effectively as possible and take care that the law be faithfully executed."[70]

The National Security Adviser made his first comments on the allegations about North in an interview with The Washington Post. In an August 11 article, McFarlane said he had told his staff to comply with the Boland Amendment. "We could not provide any support," he said, but he also stated that the NSC staff could and did maintain contact with the Contras.[71]

Summer and Fall August 1985: Congressional Inquiries

In the third week of August, Representative Michael Barnes, Chairman of the Subcommittee on Western Hemisphere Affairs of the House Committee on Foreign Affairs, and Representative Lee H. Hamilton, Chairman of the House Permanent Select Committee on Intelligence, separately wrote the President's National Security Adviser, inquiring into NSC support for the Contras.[72] Representative Barnes' letter, dated August 16, cited press accounts as the cause of concern about NSC staff support for the Contras. The reports, Barnes wrote, "raise serious questions regarding the violation of the letter and spirit of U.S. law." The letter summarized the focus of his inquiry: Whether the NSC staff provided "tactical influence on rebel military operations;" whether the NSC staff was engaged in "facilitating contacts for prospective financial donors;" and whether the NSC staff was involved in "otherwise organizing and coordinating rebel efforts."

Barnes made clear his view that such activities would violate the intent, if not the letter, of Congressional restrictions on aid to the Contras: "Congressional intent in passing the Boland Amendment was to distance the United States from the Nicaraguan rebel movement, while the Congress and the nation debated the appropriateness of our involvement in Nicaragua." The letter continued, "The press reports suggest that, despite congressional intent, during this period the U.S. provided direct support to the Nicaraguan rebels." Barnes' letter concluded with a request for all information and documents "pertaining to any contact between Lt. Col. North and Nicaraguan rebel leaders as of enactment of the Boland Amendment in October, 1984."

Representative Hamilton's letter also cited press accounts and expressed a concern about "actions that supported the military activity of the contras." He requested "a full report on the kinds of activities regarding the contras that the NSC carried out and what the legal justification is for such actions given the legislative prohibitions that existed last year and earlier this year."

In addition to the requests from Representatives Hamilton and Barnes, two other inquiries were sent to McFarlane. On October 1, Senators David Durenberger and Patrick J. Leahy, Chairman and Vice Chairman of the Senate Select Committee on Intelligence, sent a letter with specific questions, following up on a meeting with McFarlane.[73] And on October 21, Representative Richard J. Durbin wrote McFarlane asking him to respond to charges made in the media.[74]

Responses to Congress: The McFarlane Letters

As described fully in Chapter 3, the covert Contra support operation expanded substantially in the summer and fall of 1985. Until that point, North had arranged for funding, coordinated the purchase of arms, and passed military intelligence to the Contras.

Beginning with the July meeting at the Miami Airport hotel, North sought to broaden the project, attempting to replicate the earlier CIA covert operation. The Enterprise took control of third-country funds and other money obtained with the help of the NSC staff, and began to set up its own air resupply operation to provide weapons and material to Resistance troops inside Nicaragua.

On September 5, McFarlane sent the first of his responses to Congress. He wrote to Representative Hamilton: "I can state with deep personal conviction that at no time did I or any member of the National Security Council staff violate the letter or spirit" of Congressional restrictions on aid to the Contras. In denying allegations about NSC staff activities, the letter echoed the language of the Boland Amendment:

> I am most concerned . . . there be no misgivings as to the existence of any parallel efforts to provide, directly or indirectly, support for military or paramilitary activities in Nicaragua. There has not been, nor will there be, any such activities by the NSC staff.[75]

This letter, drafted by McFarlane himself, served as the model for five additional letters prepared by North, signed by McFarlane, and sent in September and October in response to Congressional inquiries.[76] In testimony before these Committees, McFarlane called these responses "too categorical."[77] He said: "I did not give as full an answer as I should have."[78] North went further, acknowledging that statements in the letters were "false," and summarizing the responses as "erroneous, misleading, evasive, and wrong."[79]

McFarlane wrote to Hamilton that he made his categorical denials only after he "thoroughly examined the facts and all matters which in any remote fashion could bear upon these charges."[80] A review by the NSC staff did take place, but the actions taken in conjunction with that review leave it open to question.

First Reaction: Conceal the Facts

When the Barnes letter arrived, Poindexter, who was then the Deputy National Security Adviser, assigned North to draft the response, noting on a memo he had received from a subordinate: "Barnes is really a trouble maker. We have good answers to all of this."[81] The "good answers," Poindexter acknowledged in testimony, involved concealing NSC staff activities supporting the Contras:

> Q: And when you suggested that he prepare the first draft of the response, was it your intention that Colonel North be able to answer that letter with finessing a description of his activities?
>
> A: That is exactly right.
>
> Q: That is why you designated him as the action officer?
>
> A: That is right, because my objective here again would have been to withhold information.[82]

McFarlane, meanwhile, had decided to draft the initial response himself. In preparation, he instructed Poindexter to assemble "records, files of all memorandums, papers, travel vouchers, and so forth" relating to the Congressional inquiries.[83] The Committees uncovered no evidence to suggest that the officers who conducted the document search were aware of or attempted to conceal the full extent of NSC staff activities. The search, however, was conducted narrowly. The information policy officer assigned by Poindexter to conduct the search wrote the following in a memo presenting plans for the document search:

> [T]he search should be as narrowly focused as was the request. In this case, Congressman Barnes has focused on '. . . documents, pertaining to any contact between Lt. Col. North and Nicaraguan rebel leaders as of . . . October, 1984.' . . . Fishing expeditions in all files relating to Central America and/or Nicaragua are NOT necesssary to respond to the request.[84]

The officer ruled out a search of the files in North's office, explaining, "they are 'convenience files' generally made up of drafts, and/or copies of documentation in the institutional and Presidential Advisory files."[85] North's files, in fact, included nonlog memos, many PROF notes, his notebooks, and letters to Calero, Owen, and others.

Finally, the officer noted that appointment and telephone logs had become "favorite targets" of such Congressional inquiries, and suggested "[i]t may be in our interest to be terribly forthcoming and bury Mr. Barnes in logs of dates and/or names re meetings and telecons or perhaps to offer to do so putting him on notice that the logs give times and dates but no substance." She recommended, however, "that for now we limit the search of appointment and telephone logs to Ollie," thus leaving the search to the main target of the inquiry. Under the recommendation, North would be asked to sample the logs and "give us a sense of what they consist of and of the potential relevance to the request."[86]

Poindexter approved that recommendation, along with the other recommendation to begin a search of all Presidential and official NSC files. He also did not indicate any disagreement with the officer's statement that North's office files ought not be searched.[87] Within a few days, some 50 relevant documents were identified, and 10 to 20 were deemed worthy of review. They were given to Commander Paul Thompson, the NSC's General Counsel. On or about August 26, Thompson gave the documents to McFarlane, warning him that some warranted concern and raising the possibility of asserting executive privilege in response to the Barnes inquiry.[88]

The Six "Troubling" Memos

McFarlane reviewed the documents and selected six memorandums which, despite the narrow focus of the search, "seemed to me to raise legitimate questions about compliance with the law." He added: "[A]n objective reading would have taken passages in each of these memorandums to be either reflective of a past act that was not within the law or a recommendation that a future act be carried out that wouldn't be."[89]

A summary of the six documents, all memos from North to McFarlane, follows:

Memo of December 4, 1984: "Assistance for the Nicaraguan Resistance."

The memo [90] described a meeting between North and an official of Country 4, a totalitarian country, a meeting undertaken "in accord with prior understanding." [91]

At the meeting, according to the memo, North attempted to convince the official to permit a sale of antiaircraft missiles and launchers to the Contras. The official had mistakenly believed that the weapons were intended for the Central American country listed on the end-user certificate. The memo shows North's efforts, only months after the most restrictive Boland Amendment went into effect, to obtain sophisticated weapons for the Contras.

The memo also recounted a meeting with Singlaub, who described his efforts to solicit aid for the Contras from two other countries located in the Far East. North wrote, "If it is necessary for a USG official to verify Calero's bona fides, this can be arranged."[92] Such an arrangement would constitute facilitation of a contribution to the Contras. Finally, the memo discussed David Walker, a former British Special Air Services officer who, in a meeting with North, offered to conduct sabotage operations for the Resistance. "Unless otherwise directed," North wrote, "Walker will be introduced to Calero and efforts will be made to defray the cost of Walker's operations from other than Calero's limited assets."[93]

McFarlane testified that upon receiving this memo he believed that he asked Poindexter to investigate and "find out from Colonel North what had happened and how his actions squared with the law."[94] The memo contains the notation: "Noted JP" in Poindexter's handwriting.[95]

Memo of February 6, 1985: "Nicaraguan Arms Shipment."

The memo [96] noted that the Nicaraguan merchant ship, *Monimbo*, was about to pick up a load of arms for delivery to Nicaragua, a delivery that North urged should be stopped. North noted, "if asked, Calero would be willing to finance the operation" to seize or sink the ship but does not have the personnel to do so. North suggested that foreign countries might be able to help.[97]

North added that if time did not permit a "special operation" to seize the ship, "Calero can quickly be provided with the maritime assets required to sink the vessel before it can reach port of Corinto." [98] North recommended "that you authorize Calero to be provided with the information on *Monimbo* and approached on the matter of seizing or sinking the ship." National Security Council records indicate that McFarlane saw this memo and did not approve or disapprove. McFarlane testified that he did not approve.[99] Admiral Poindexter wrote on the memo, "We need to take action to make sure ship does not arrive in Nicaragua." He attached a note saying, "Except for the prohibition of the intelligence community doing anything to assist the Freedom Fighters I would readily recommend I bring this up at CPPG [Crisis Pre-Planning Group meeting] at 2:00 today. Of course we could discuss it from the standpoint of keeping the arms away from Nicaragua without any involvement of Calero and Freedom Fighters." [100]

Memo of March 5, 1985: "[A Central American Country's] Aid to the Nicaraguan Resistance."

The memo [101] requested McFarlane's signature on memorandums to senior Cabinet officers asking their views on increased U.S. aid to a Central American country. "The real purpose of your memo," North wrote, "is to find a way by which we can compensate [the country] for the extraordinary assistance they are providing to the Nicaraguan freedom fighters."[102] The attached memo did not include a reference to such a purpose. North attached to the memo for McFarlane false end-user certificates provided by the Central American country to cover nearly $8 million of munitions that were soon to be delivered to the FDN. The certificates, North wrote, "are a direct consequence of the informal liaison we have established with [an official of the Central American country] and your meeting with him and [the country's] President." [103] The certificates were made out to Energy Resources International, a company owned by Albert Hakim and Secord.

North added in the memo, "Once we have approval for at least some of what they have asked for, we can ensure that the right people in [the Central American country] understand that we are able to provide results from their cooperation on the resistance issue." [104]

North recommended that McFarlane sign and transmit the attached memo to the other Cabinet officers. NSC records reflect that McFarlane approved the recommendation. However, McFarlane testified that aid was sought on its merits, and not to reward the Central American country for helping the Contras.[105]

Memo of March 16, 1985: "Fallback Plan for the Nicaraguan Resistance."

The memo [106] set out a plan to aid the Contras in the event that Congress did not do so. It included several recommendations. Among them:

- The President publicly urge Americans to contribute funds for humanitarian aid to the Contras. McFarlane wrote in the margin, "Not yet."[107]

- Creation of a tax-exempt corporation for donations. McFarlane wrote "Yes."[108]

- "The current donors . . . be apprised of the plan and agree to provide additional $25-30M to the resistance for the purchase of arms and munitions." McFarlane wrote "doubtful."[109]

According to McFarlane, the term "current donors" referred to Country 2.[110]

Memo of April 11, 1985: "FDN Military Operations."

In the memo,[111] North described how the Contras spent the $24.5 million "made available since USG funding expired," making clear that the funds obtained by McFarlane went mostly for "arms, ammunition, and other ordnance items." [112]

North also wrote:

> Despite the lack of any internal staff organization . . . when the USG withdrew, the FDN has responded well to guidance on how to build a staff. Although there was a basic lack of familiarity with how to conduct guerrilla-type operations, since July, all FDN commanders have been schooled in these techniques and all new recruits are now initiated in guerrilla warfare tactics before being committed to combat. In short, the FDN has well used the funds provided and has become an effective guerrilla army in less than a year.[113]

North described Contra plans for "future operations," including a further increase in troops, a special operations attack against the Sandinista Air Force, a ground military operation against a mine complex and, "the opening of a southern front . . . which will distract EPS units currently committed to the northern front."[114] He continued:

> It is apparent that the $7M remaining will be insufficient to allow the resistance to advance beyond these limited objectives, unless there is a commitment for additional funds. The $14M which the USG may be able to provide will help to defray base camp, training, and support expenses but will not significantly affect combat operations until early Autumn due to lead-time requirements. Efforts should, therefore, be made to seek additional funds from the current donors ($15-20M) which will allow the force to grow to 30-35,000.[115]

North recommended "that the current donors be approached to provide $15-20M additional between now and June 1, 1985." [116] NSC records showed that McFarlane indicated no decision and returned the memo to the System IV files. McFarlane testified that he rejected North's recommendation and sought no further aid from Country 2.

Memo of May 31, 1985: "The Nicaraguan Resistance's Near-Term Outlook."

In the memo,[117] North provided an update of Contra political and military activities. Among other things, he listed several important FDN military successes and concluded: "These operations were conducted in response to guidance that the resistance must cut Sandinista supply lines and reduce the effectiveness of the Sandinista forces on the northern frontier."[118] North concluded by noting, "[P]lans are underway to transition from current arrangements to a consultative capacity by the CIA for all political matters and intelligence, once Congressional approval is granted on lifting Section 8066 restrictions [the Boland Amendment]."[119] He added: "The only portion of current activity which will be sustained as it has since last June, will be the delivery of lethal supplies."[120]

North recommended that McFarlane brief the President on these matters.[121] NSC records do not indicate whether McFarlane approved this recommendation.

Undiscovered Documents

The memos Thompson presented to McFarlane in late August 1985 did not represent all the memos written by North to McFarlane demonstrating North's involvement in supporting the Contras. Because it was limited by the information policy officer to official NSC and Presidential Advisory files, the search would not uncover "nonlog" memorandums. In one such memo, dated November 7, 1984, North made clear that he was attempting to pass intelligence information about Sandinista HIND helicopters to Calero.[122]

Nor did the search turn up relevant logged memorandums in which North indicated that he and Contra leaders had planned the timing of rebel military operations. For example, a March 20, 1985, memo stated:

> In addition to the events depicted on the internal chronology at Tab A, other activities in the region continue as planned—including military

operations and political action. Like the chronology, these events are also timed to influence the vote:

- planned travel by Calero, Cruz and Robelo;

- various military resupply efforts timed to support significantly increased military operations immediately after the vote (we expect major Sandinista crossborder attacks in this time frame—today's resupply . . . went well); and

- special operations attacks against highly visible military targets in Nicaragua.[123]

McFarlane-North Alteration Discussions

On August 28, McFarlane and North began a series of lengthy meetings to fashion a response to the Congressional inquiries. According to a chronology prepared by McFarlane, they met six times and spoke by phone four times between August 28 and September 12, the date of the response to Representative Barnes.[124] Although both McFarlane and North acknowledged to the Committees that they discussed altering the documents, the two dispute the purpose of the meetings.

McFarlane maintained that the meetings, together with the document review, constituted his investigation into North's activities, an investigation, he said, that turned up no proof of illegal activities.[125] For example, he asked North about allegations relating to fundraising. According to McFarlane, North responded that he had not solicited or encouraged donations, that he merely told potential donors, "if you want to be helpful to the Contras, go to Miami, they're in the phone book they have an office, and do it yourselves."[126]

The two reviewed the documents and, according to McFarlane, North explained that his memos were being misinterpreted. For example, in one memo North wrote that the FDN "has responded well to guidance on how to build a staff," and that "all FDN commanders have been schooled" in guerrilla warfare tactics.[127] McFarlane said North told him, contrary to any implication in the document, that the guidance came not from him but from retired military officers hired by the Contras.[128] As McFarlane related the events, North offered to alter the documents and McFarlane gave him a tentative go-ahead. McFarlane testified:

> Well, as we went through them, he pointed out where my own interpretation was just not accurate . . . and he just said, you are misreading my intent, and I can make it reflect what I have said if this is ambiguous to you, and I said all right, do that.[129]

North shortly returned with a sample alteration. McFarlane's testimony indicates that the document North had altered was "FDN Military Operations," dated April 11, 1985. The recommendation in the document, "that the current donors be approached to provide $15-20M additional between now and June 1, 1985" was replaced with a recommendation that "an effort must be made to persuade the Congress to support the Contras."[130] North had asserted, according to McFarlane, that the problem with the documents was one of interpretation and that the changes would be slight. McFarlane acknowledged that this alteration left the document "grossly at variance with the original text."[131]

McFarlane testified that he did not replace any original NSC documents with altered documents and did not instruct North to do so. He said he took with him when he resigned the pages North had altered and eventually destroyed them.[132]

North's version of events is substantially different. McFarlane, North testified, brought the selected documents to his attention, "indicated that there were problems with them, and told me to fix them." This meant, he testified, that he was to "remove references to certain activities, certain undertakings on my behalf or his, and basically clean up the record."[133] The documents, North acknowledged, "clearly indicated that there was a covert operation being conducted in support of the Nicaraguan Resistance."[134] That is why, North testified, McFarlane instructed him to alter them:

> The documents, after all, demonstrated his [McFarlane's] knowledge and cognizance over what I was doing, and he didn't want that. He was cleaning up the historical record. He was trying to preserve the President from political damage. I don't blame him for that.[135]

North testified that he did not abide by McFarlane's instruction until shortly before his dismissal: "I saw towards the end of my tenure that this list still had not been cleaned up, and so I went and got the documents out of the system and started revising the documents."[136]

Although the record is inconclusive on what exactly McFarlane and North discussed at their meetings, it is undisputed that both the National Security Adviser and one of his principal staff members considered altering NSC documents. They discussed this course after receiving requests from several Members of Congress for access to precisely those types of documents.

Responses to Congress: The Denials

Within days of his document review and discussions with North, McFarlane sent the first of his responses to Congress. In addition to the broad assurance that the NSC staff was complying with the "letter and the spirit" of the Boland Amendment, the responses contain specific denials of allegations that the NSC staff had provided fundraising or military support to the Nicaraguan resistance.

Fundraising

McFarlane's September 12 response to Representative Barnes stated: "None of us has solicited funds, [or] facilitated contacts for prospective potential donors. . . ."[137]

In his October 7 letter, McFarlane replied as follows to a written question from Representative Hamilton:

> Mr. Hamilton: The Nicaraguan freedom fighters, in the last two months, are reported by the U.S. Embassy, Tegucigalpa, to have received a large influx of funds and equipment with some estimates of their value reaching as high as $10 million or more. Do you know where they have obtained this assistance?
>
> Mr. McFarlane: No.[138]

In fact, according to his own testimony, McFarlane not only knew how the Contras obtained financial assistance, he personally facilitated the main donation to the Contras:

> Q: . . . I was referring to Country Two and the fact that the actual donors had, as I understand it, Country Two was the actual donors—
>
> A: Yes.
>
> Q: And that you had not only facilitated contacts, but you had facilitated the actual contribution.
>
> A: I will accept that, yes.[139]

Furthermore, according to Assistant Secretary of State Gaston Sigur and North, McFarlane was aware of Sigur's efforts to obtain a donation from a Far Eastern country—efforts that took place while the responses to Congress were being prepared. North, of course, was aware of that approach. Indeed, on August 28, the day he and McFarlane had their first lengthy meeting to discuss the Congressional inquiries, North reassured an official from that country that the United States would be grateful if his country made a contribution to the Contras.[140] The country responded with a $1 million gift.[141]

Also, in his letter of September 12, Representative Hamilton asked:

> Has Colonel North been the focal point within the NSC staff for handling contacts with private fundraising groups, such as the World Anti-Communist League and the Council for World Freedom headed by retired Major General John K. Singlaub?

McFarlane replied, "No."[142] In fact, however, North had been dealing with Singlaub on fundraising, as the December 4, 1984, North-to-McFarlane memo showed. As North told the Committees, he "certainly saw General Singlaub a lot related to support for the Nicaraguan Resistance."[143]

Military Assistance

In his September 5 letter, McFarlane stated:

> At no time did we encourage military activities. Our emphasis on a political rather than a military solution to the situation was as close as we ever came to influencing the military aspect of their struggle.[144]

North was heavily involved in the military aspect of the Contra struggle. He testified that this statement was false.[145] In addition to helping arm the Contras, and to providing intelligence and cash to Contra leaders, North also, beginning in the summer of 1985, coordinated the efforts to set up a resupply operation to provide lethal and nonlethal supplies to troops inside Nicaragua. Several weeks before the letters were drafted, North asked Secord to set up the operation, and he called on Ambassador Lewis Tambs to facilitate the construction of an airfield for refueling resupply aircraft.[146] Yet, McFarlane wrote to Representative Hamilton on October 7:

> Lieutenant Colonel North did not use his influence to facilitate the movement of supplies to the resistance.[147]

North acknowledged that this statement was false.[148]

It is unclear whether McFarlane was fully aware of North's activities. McFarlane testified he was not.[149] But the documents McFarlane reviewed and about which he was concerned shortly before drafting the first response to Congress showed that North repeatedly attempted to influence the military aspect of the Contras' struggle.

Furthermore, McFarlane specifically denied in his October 7 letter to Representative Hamilton that North had provided the Contras "tactical advice":

> The allegation that Lieutenant Colonel North offered the resistance tactical advice and direction is, as I indicated in my briefing, patently untrue.[150]

North acknowledged to the Committees that although he never "sat down in the battlefield and offered direct tactical advice . . . I certainly did have a number of discussions with the Resistance about military activities, yes, to include the broader strategy for the Southern front and an Atlantic front and an internal front."[151] And McFarlane testified: "I felt it was likely that an officer of the qualifications and excellence of Col. North, when he was down visiting in Central America, probably did extend advice."[152] Indeed, McFarlane admitted in his testimony that he felt in 1985 that "it was likely" that North had gone "beyond the law" on giving military advice to the Contras.[153] He testified: "But without certain evidence of it, not being able to disapprove it, I accepted that [the denials McFarlane said North gave him] as sufficient grounds for saying it as truth, and I believe that I was wrong to do so. But that is why I sent it."[154]

McFarlane maintained that he believed at the time that such advice was not the "central concern" of Congress. "It seemed to me that that was inconsequential to the outcome of the conflict, and probably not in the eyes of Congress a serious matter," he said.[155] Representative Barnes' letter, however, shows that one of his main concerns was about reports that North had provided " 'tactical influence' on rebel military operations."[156] In addition, Representative Hamilton, in his first letter, expressed an interest "in actions that supported the military activity of the contras."[157] Each of the other letters from Congress asks McFarlane to respond to specific allegations about NSC military support for the Contras. In any case, McFarlane in his letters offered no such explanation, merely a flat denial.

Finally, despite his assertion in his letters to Congress, McFarlane himself influenced the Contras' military struggle. The $32 million obtained with his help from Country 2 enabled the Resistance to purchase weapons to continue fighting. The April 11, 1985, memo from North describing how the funds were expended stated clearly that the donation was being used to purchase lethal supplies.[158]

McFarlane's Meetings with Members

The denials McFarlane made in his letters were repeated in face-to-face meetings with Members of Congress. On September 5, Senate Select Committee on Intelligence Chairman Durenberger and Vice Chairman Leahy questioned McFarlane in an hour-long private briefing. At the start of their meeting, McFarlane showed the two Senators a copy of the letter he would send to Representative Hamilton that day. McFarlane assured Senators Durenberger and Leahy that "no law had been broken," and that "there was no intent to circumvent restrictions Congress placed on aid to the Nicaraguan Resistance." Asserting that he had grilled North on his involvement with supporters of the Resistance, McFarlane said he was confident that "[N]o NSC staff member either personally assisted the Resistance or solicited outside assistance on their behalf." Senator Leahy described the meeting in a letter written shortly thereafter:

> Mr. McFarlane said that the officer [North] had frequently received calls from persons wishing to donate funds, and that he referred them to the Contra leaders themselves. He insisted that the officer never solicited funds, encouraged donations or initiated contacts with potential donors. He further denied that the officer, in several personal meetings with Contra leaders, both in Washington and in Central America, ever offered military advice. The officer's authorized role, Mr. McFarlane said, was to assure the Contras during the time of the Congressional aid cutoff of the President's continued moral support. . . .[159]

McFarlane concluded by telling the Senators, "I can't believe everything everyone says, but I do believe Ollie."[160]

After the session, Senator Durenberger told a reporter that he felt McFarlane was candid about his knowledge, but that questions about U.S. Government support for the Contras remained:

> So we came away from the meeting feeling that from Bud McFarlane we're getting what he believes to be the situation with regard to his staff. Are we satisfied that this sort of concludes the matter and that no one in any way involved was directing the effort? No, you can't be satisfied.[161]

On September 10, McFarlane met with Representative Hamilton and other Members of the House Intelligence Committee. As Representative Hamilton later summarized the meeting in a letter to a colleague, McFarlane told the Committee Members that President Reagan had made clear that the entire executive branch had to comply with the Boland Amendment. McFarlane said he had conducted a thorough investigation into allegations made about the NSC staff and concluded that North had not "given military advice of any kind to the Contras," nor had he "solicited, accepted, transmitted or in any other way been involved with funds for the Contras."[162]

The House Intelligence Committee Chairman accepted the denials of the National Security Adviser. At the close of the session, Mr. Hamilton told McFarlane, "I for one am willing to take you at your word."[163]

McFarlane-Barnes Document Dispute

In his first response to Representative Barnes on September 12, McFarlane ignored the Congressman's request for documents. A PROF note to Paul Thompson on September 20 indicated that McFarlane believed he had successfully sidestepped the document issue: "Now that we have the Barnes letter behind us you can return the Contra papers to Ollie please."[164]

Ten days later, however, Representative Barnes renewed his document request. In a letter to McFarlane dated September 30, 1985, the Congressman wrote:

> I am sure you understand that the pertinent documents must be provided if the Committee is to be able to fulfill its obligation to adopt legislation governing the conduct of United States foreign policy and to oversee the implementation of that policy under the law.[165]

Congressman Barnes went on to explain why he felt strongly about his Committee's need to review the documents:

> It may be helpful if I spell out more clearly the interest of the Committee. The Committee retains its concern about possible violations of federal law by members of the NSC staff. However, that is not the Committee's only—or even primary—concern, given that the enforcement of the law is an Executive Branch function. It is the Committee's responsibility, however, to conduct oversight of laws that limit the activities of the Executive Branch under the Committee's jurisdiction, and to reach judgments as to whether changes in the law are indicated by those activities. Even if the Committee determined that the activities of the NSC staff on this matter were entirely legal, the Committee might still determine that changes in the law were necessary. I am sure it is obvious to you that the Committee cannot make those judgments unless it has in its possession all information, including memorandums and other documents, pertaining to any contact between the NSC staff and Nicaraguan rebel leaders. I would hereby renew my request for such information, both oral and documentary.[166]

Thus, the Barnes letter of September 30 emphasized that Congress was entitled to know about the NSC's efforts to support the Contras, even if those efforts were legal. Once apprised of the facts, Congress would determine whether additional legislation was required, including closing any loophole in the Boland Amendment that the NSC staff might have claimed.

Representative Barnes and McFarlane met at the White House on October 17. The day before the meeting, NSC General Counsel Paul Thompson prepared a memo for McFarlane suggesting that Representative Barnes should be told that the National Security Adviser had no legal authority to turn over the documents. North's actions, Thompson wrote, were at the National Security Adviser's direction "in furtherance of the President's initiatives." Documents pertaining to North's actions in carrying out the President's instructions "are internal and deliberative in nature and are furthermore not NSC agency documents. As Presidential advisory papers, they fall under the dominion of the President and are no longer subject to your disposition."[167]

At the meeting with Congressman Barnes, McFarlane, referring to a stack of documents on his desk, explained that a document search had been made and that McFarlane had selected documents relevant to Congressional inquiries. He told Congressman Barnes he would not permit the documents to leave his office but would allow the Congressman to read them there. McFarlane acknowledged that he made the offer knowing Representative Barnes would likely refuse it:

> Q: And I take it—it was part of your thinking that if a busy Congressman came down to your office and saw a substantial stack of documents, and you were having a short meeting [McFarlane had budgeted one hour for the session], it was very unlikely that he would ask to read through the documents from one end to the other?
>
> A: I think that is true, yes.[168]

Indeed, Representative Barnes deemed the offer not to be serious. He understood McFarlane to imply that the documents on the desk were not all the documents but only the ones McFarlane had concluded were "relevant." This, Barnes felt, "was not an adequate way to ascertain the truth of the allegations." Furthermore, Representative Barnes believed that prohibiting staff from reviewing the documents would result in an incomplete investigation: "[I]n my experience the only way you can do a good investigation is to compare documents—one to another—and to analyze these with staff who have the time and background to work at putting them in context." McFarlane's offer, therefore, "didn't seem like a serious proposal."[169]

On October 29, Representative Barnes wrote McFarlane again expressing his view that the procedures mandated by McFarlane were "inadequate."[170] He requested that McFarlane turn the documents over to the House Intelligence Committee, thereby assuring that the classified materials would be appropriately handled. Representative Barnes wrote: "I believe that this proposal would surely resolve any concerns that the Administration might have about the security of the information, while at the same time fulfilling the responsibilities of the House."[171] This was the last correspondence between McFarlane and Representative Barnes on this issue.

North, however, tried unsuccessfully to convince McFarlane to send one more letter—a response North maintained he would have preferred to send at the start.[172] In the draft letter, McFarlane refused outright to turn over documents claiming that they were "internal Presidential documents regarding sensitive relations with other governments."[173] The executive branch, the letter said, "must abide by its commitments to other governments not to compromise sensitive information."[174] The letter stated that disclosure of the documents sought by Barnes would "adversely effect the national security of the United States and endanger our citizens."[175]

McFarlane's 1986 Testimony

In the wake of the November 1986 relevations and a full year after he left office, McFarlane testified before several panels investigating the Iran-Contra Affair: the Senate and House Intelligence Committees, the Senate and House Foreign Affairs Committees, and the President's Special Review Board (The Tower Board). Again, Members of Congress—and this time officials on the Tower Board staff as well—were unable to learn the crucial facts about the Government's actions in support of the Nicaraguan Resistance.

The former National Security Adviser acknowledged to the panels that North had told him in May 1986 about the diversion of Iranian arms sales funds to the Contras. That aspect of Administration support for the Resistance, by the time of McFarlane's December 1986 testimony, had been revealed by the Attorney General. Beyond that, McFarlane withheld virtually all other relevant information in his possession about U.S. support for the Contras during the period of Congressional restrictions. He concealed new information he learned of North's activities in 1986, and he repeated many of the inaccurate statements that he had made orally and in writing to Members of Congress while he was National Security Adviser.

In his testimony before the Select Committees, McFarlane acknowledged that his remarks to investigating panels between December 1986 and February 1987, like his statements about U.S. support of the Resistance in 1984 and 1985, had been "clearly too categorical."[176]

McFarlane's Testimony on North's Activities in 1986

On December 1, 1986, while he was testifying before the Senate Select Committee on Intelligence, McFarlane was asked whether, after his resignation, there were "any indications" about "North's involvement in the funding [of the Contras] either directly or indirectly." McFarlane responded:

> Well, since leaving Government my only basis for knowing anything more about the issue is what I read in the press and the events that I described this morning about what I was told about the diversion of Iranian money in May of this year. So I have no personal basis for corroborating the press stories that I've seen that have alleged that Col. North has done various things to channel money and to advise and done business with arms merchants. I have no independent knowledge of that and I guess the only thing that I do know first hand from Col. North was what he told me about diversion of Iranian monies. I've described that this morning.[177]

In fact, despite his assertion that he had "no personal basis for corroborating" allegations about North, and that "the only thing" he knew "first hand from Col. North" was the diversion, McFarlane had learned directly from North in 1986 about efforts to provide funds and weapons to the Resistance. Indeed, McFarlane had offered to assist. After his resignation, McFarlane communicated regularly with the NSC staff via a PROF machine he was permitted to keep in his home. PROF messages in 1986 show that North freely shared with McFarlane details of the NSC-coordinated Contra operation, despite North's strong desire to hold close information about the project. The following exchange between North and McFarlane about efforts to obtain sophisticated Blowpipe missiles for the Resistance is illustrative. In late March, North wrote to McFarlane about efforts to obtain sophisticated surface-to-air missiles for the Contras:

> After the House vote on aid to the resistance, I plan to take a few days just to get re-acquainted w/ the family. Meanwhile, we are trying to find a way to get 10 BLOWPIPE launchers and 20 missiles from . . . thru the Short Bros. Rep. The V.P. from Short Bros. sought me out several mos. ago and I met w/ him . . . a few weeks ago . . . . Short Bros., the mfgr. of the BLOWPIPE, is willing to arrange the deal, conduct the training and even send U.K. "tech reps" fwd if we can close the arrangement. Dick Secord has already paid 10% down on the delivery and we have a [Central American country] EUC [end user certificate] which is acceptable to. . . .[178]

McFarlane replied about one week later:

> I've been thinking about the blowpipe problem and the Contras. Could you ask the CIA to identify which countries the . . . have sold them to. I ought to have a contact in at least one of them. How are you coming on the loose ends for the

> material transfer? Anything I can do? If for any reason, you need some mortars or other artillery—which I doubt—please let me know.[179]

In another message to McFarlane, dated April 21, 1986, North provided details on the resupply operation. "So far," he wrote, "we have seven A/C [aircraft] working, having delivered over $37M in supplies and ordnance . . . ." In the message, North also discussed the need to obtain new funding for the Contras. "The resistance support acct is darned near broke," he wrote. "Any thoughts where we can put our hands on a quick $3-5M? Gaston [Sigur] is going back to his friends who have given $2M so far in hopes that we can bridge things again, but time is running out along w/ the money." Sigur recalled making no such approach in 1986.[180] Demonstrating to McFarlane his operational control of the resupply program, North added that he had told Secord to sell "the ship first and then the a/c [aircraft] as a means of sustaining the effort." He then proposed to McFarlane that U.S. businessman Ross Perot be approached for funds. "As you know, we've never asked him for help in this regard, believing that he wd be inclined to talk about it," North wrote, an indication that he and McFarlane had discussed funding alternatives. "It may now be time to take that risk. Any thoughts?"[181]

The reference in the PROF to Richard Secord's involvement in the Contra operation is not the only such reference. In February 1986, North sent a PROF message to McFarlane in which he said that he had "asked JMP [Poindexter] for a session w/ you and Dick Secord as soon as possible after Dick returns tomorrow night from Eur[ope] where he is setting up an arms delivery for the Nic[araguan] resistance. A man of many talents ol' Secord is."[182] In his testimony before the Select Committees, McFarlane specifically acknowledged that he was aware in 1986 that "Secord was involved in helping the Contras."[183] But on December 10, 1986, testifying before the House Intelligence Committee, McFarlane denied any such knowledge. Representative Brown asked: "Let me ask about Gen. Secord . . . . Were you aware of the fact that he had a role in the Contra supply operation?" McFarlane replied, "No sir."[184]

Testimony on Fundraising Activities

As described above, McFarlane arranged for two large donations totalling about $32 million from Country 2, telling a high official of that country about U.S. concerns and the Contras' needs, and then providing the bank account number when the country decided to donate funds. The first gift came in 1984 and the second in February and March 1985.

In his testimony before Congress following the November 1986 disclosures, McFarlane denied personal knowledge of the donations by Country 2. During McFarlane's testimony on December 8, 1986, before the House Foreign Affairs Committee, Representative Mel Levine asked: "There have been also press reports that" Country 2 has been "indirectly involved in financing the Contras. Are you aware of any such activities?" McFarlane replied: "I have seen the reports and I have heard that" Country 2 has contributed. However, he said, "The concrete character of that is beyond my ken."[185]

Similarly, McFarlane testified at that session in response to a question from Representative Edward F. Feighan that he had "seen the reports that various countries have" donated funds to the Contras, including Country 2. He testified: "I have no idea of the extent of that or anything else."[186]

Acknowledging before the Select Committees that his testimony was "not as full an account as I could have given," McFarlane maintained nevertheless that his earlier testimony was "technically accurate."[187] He told the Committees that even though he had facilitated the donations, he did not precisely know the extent of the contribution or the exact total of the deposits. However, such precision was scarcely the focus of the questions from the Members of Congress. Moreover, the April 11, 1985, North memo which McFarlane reviewed in connection with the summer 1985 Congressional inquiries, described in great detail the extent of the donation.[188]

Members of both the House and Senate Intelligence Committees specifically asked McFarlane if he still stood by his 1985 statement that there was no "official or unofficial" relationship involving any member of the NSC staff and fund-raising for the Nicaraguan Resistance.[189] Despite his role in the two contributions from Country 2, and despite the knowledge that North and Sigur said he had of Sigur's discussions with Country 3 about a possible donation—all of which occurred during his tenure as National Security Adviser—McFarlane stood by his statement: "I believe as I did then that that was true throughout my time and association with the NSC."[190]

On December 18, in his second appearance before the Senate Intelligence Committee following the November disclosures, McFarlane acknowledged for the first time that he "believe[d]" Country 2 had donated funds. He knew of the donation, he testified, only because Secretary Weinberger told him: "I think that is the only one I ever heard about but I was told by the Secretary of Defense that there had been a contribution by [Country 2], and I don't know that I could put a date on it."[191]

Six weeks after this testimony, McFarlane wrote the Chairman and Vice Chairman of the Senate Intelligence Committee to correct his statements. In his letter, he described the 1984 donation, maintaining, as he did before the Select Committees, that he had not solicited the gift. McFarlane did not mention the second contribution from Country 2. He wrote: "At no time from that moment [spring 1984] to this date, have I ever sought, brokered or otherwise managed donations from anyone."[192]

Testimony on 1985 Activities

As McFarlane acknowledged before these Committees, the documents he gathered in response to the summer 1985 Congressional inquiries, "raise[d] legitimate questions about compliance with the law."[193] In his testimony following the diversion disclosure, McFarlane not only withheld his concerns about the documents, but asserted that they proved that North had fully complied with the Boland Amendment.

For example, on December 10, 1986, before the House Intelligence Committee, responding to questions from Representative Dick Cheney, McFarlane testified that in the summer of 1985 he "went to considerable length to determine whether" North had violated the Boland Amendment. A document search, he said, "turned up two or three inches of paper, that reported on contacts that did occur between Colonel North and myself, indeed the President and Contra leaders." He continued:

> [F]rom the sum total of these documents, it was clear that the activities were to meet with Contra officials, civilian officials, tell them in so many words where we were, that we did not have Congressional support for military help, that we would try to get it, continue working with the Congress, that we couldn't provide it in the short term but we hoped that they would use the time until we could get it, to strengthen their political organization, bring in people like Cruz and others to develop a political program . . . but we couldn't do anything to help them[194]

McFarlane also told the Tower Board that "neither the documentary record nor interviews with Colonel North showed any evidence" that North had provided military or fundraising support to the Contras.[195] As noted above, the documents about which McFarlane was concerned in August 1985 were not so innocuous.

Summer 1985: Inquiry of the Intelligence Oversight Board

The flood of press allegations about possible NSC violations of the Boland Amendment prompted no investigations by executive branch law enforcement agencies. Only one small executive oversight organization, the Intelligence Oversight Board, responded to the widespread charges. In late August 1985, the Board conducted an inquiry into NSC staff activities. After a brief investigation by its counsel, Bretton G. Sciaroni, the Board concluded that Oliver North had not provided military or fundraising assistance to the Nicaraguan Resistance.[196]

Sciaroni began his inquiry with a 30 to 40 minute interview of Paul Thompson. Shortly before that interview, Thompson turned over to McFarlane the NSC file documents on North's activities. Those documents included the six "troubling" memorandums that indicated, as Thompson later put it, that "if he [North] was in effect doing what was reflected in the documents, he was perhaps not aware of the constraints of the . . . Boland Amendment."[197] In his interview with Sciaroni, Thompson made no mention of North's activities as depicted in the memorandums. Indeed, he denied that North had provided "military support" to the Contras and asserted that North had limited himself to providing political encouragement and "moral support" while funds were unavailable.[198] Although the Committees cannot be certain what Thompson knew directly of North's activities, it is clear that his denials cannot be squared with the memorandums he had given McFarlane.

Furthermore, Thompson withheld from Sciaroni the six "troubling" memorandums included in the batch he gave McFarlane. During their meeting, Thompson provided Sciaroni an inch-thick pile of documents and told him he was producing "the relevant documents for my review," according to Sciaroni. The only documents to which Sciaroni would not be permitted access, Thompson told him, were North's personal working files. Thompson also told Sciaroni that the pile of documents he was turning over were the same as those that had been "shown to the Hill."[199] Missing from the pile were many of the documents Thompson himself acknowledged raised questions about North's activities.[200]

Sciaroni's next investigative step was to talk with North. During a 5-minute discussion, North gave Sciaroni a "blanket denial" of charges that he was actively involved in aiding the Contras.[201] Although North did not recall the conversation with Sciaroni, he was clear in his testimony that he had no intention of being candid with the Intelligence Oversight Board Counsel: "I am sure if he asked me" about supporting the Contras, "I denied it, because after all we viewed this to be a covert operation and he had absolutely no need to know the details of what I was doing."[202]

Still, Sciaroni stressed in his testimony that he was justified in expecting cooperation from NSC staff officers. Both Thompson and North, he said, "understood who I represented, the mandate of the Board to look into matters of legality, and the seriousness of the allegations that had been raised."[203] His investigation was "an anomaly" in that he had no legal authority over the NSC staff, and therefore, Sciaroni said, he "was relying upon the good will of other officers at the White House."[204] Once again, however, North chose to conceal. This time, the object of his deception was a board established by and operating within the executive branch, an entity privy to intelligence information and programs of the highest sensitivity.

Summary

While exercising its responsibility to oversee the implementation of the law cutting off aid to the Nicaraguan Resistance, Congress tried repeatedly through 1984 and 1985 to learn how the Resistance was staying alive and whether the U.S. Government was involved with the Contras' survival. The President, the Vice President, the National Security Adviser, and officials on the NSC staff were aware that a multimillion dollar donation from Country 2, facilitated by McFarlane, was largely responsible for the Contras' survival. North, Poindexter, and perhaps other high Administration officials, were aware that the NSC staff was directly providing lethal support to the Nicaraguan Resistance. McFarlane denied knowledge of North's activities, but documents he reviewed following Congressional inquiries show that North actively assisted the Contras' military effort.

Yet Congressional inquiries on U.S. support for the Contras were invariably met with categorical denials. So too were inquiries made by the media. In both cases, the information sought related not to sensitive operational details, but to a controversial foreign policy issue. The question repeatedly asked was whether it was the policy and practice of the U.S. Government during this period to provide lethal support to the rebels fighting in Nicaragua. It was to that question that Administration officials repeatedly responded with denials.

The record leaves no doubt that some of the officials making these denials did so as part of a deliberate attempt to deceive Congress and the public. North, who testified, "I didn't want to show Congress a single word on this whole thing," admitted that the letters sent to Congress over McFarlane's signature were "false." In meetings with Members of Congress, McFarlane repeated the statements in the letters. He acknowledged in testimony before these Committees that he had been "too categorical." Poindexter testified that his intent during this period was to "withhold information." And it is difficult to reconcile CIA Director Casey's testimony in this period with his knowledge of the facts as demonstrated by the documentary evidence, and with his pledge to the Senate Intelligence Committee that he would abide by a new spirit of cooperation.

Other officials who denied the existence of U.S. support, including the State Department officials who testified before Congress in 1984 and 1985, and the press liaison of the NSC staff, were unaware of the truth, themselves victims of concealed information.

As 1986 began, a new National Security Adviser was supervising the NSC staff, promoted from within. But the covert Contra operation continued, as did the overriding concern to keep the fact that the United States was providing lethal aid to the Contras secret from Congress and the American people.

Chapter 6

1. Congressional Record, 10/10/84 at H11974.

2. McFarlane Test., *Hearings*, 100-7 Part II, at 203; see also 100-2 at 6, 20-22.

3. Ex. OLN-10, *Hearings*, 100-7, Part III.

4. Poindexter Test., *Hearings*, 100-8, at 61.

5. Congressional Record, 4/5/83 at S4109-S4110.

6. Letter of April 9, 1984, from Chairman Goldwater to Director Casey.

7. Transcript of 4/26/84 hearing, at 3.

8. U.S. Senate Report, 98-665, at 9-10.

9. C0619-C0621.

10. Public Law 212, 98th Cong., and Public Law 215, 98th Cong. Fiscal year 1984 runs from October 1, 1983 through September 30, 1984.

11. Congressional Record, 11/18/83, at H10544.

12. *Id.*

13. Oliver North and Alton Keel wrote McFarlane in a February 7 memo that "Congressional resistance on this issue is formidable, to the degree that prospects for success are bleak even with a concerted effort." ("Additional Resources for Our Anti-Sandinista Program".)

14. See Ch. 1.

15. Ex. 29, *Hearings*, 100-2, at 456-57.

16. See Chapter 2.

17. McFarlane Test., *Hearings*, 100-2, at 14.

18. McFarlane Test., *Hearings*, 100-2, at 18. See also Chapter 2.

19. McFarlane Test., *Hearings*, 100-2, at 18.

20. McFarlane Test., *Hearings*, 100-2, at 18, 24.

21. Shultz Test., *Hearings*, 100-9, at 4; Weinberger, Test., *Hearings*, 100-10, at 148-49. A second possible reason for the decison not to tell Shultz could be related to the opposition to third-country approach Shultz expressed at a June 24 NSPG meeting and on other occasions. See Shultz Test., *Id.* at 13-17.

22. North Test., *Hearings*, 100-7, Part I, at 75-76.

23. North Notebook, June 25, 1984, Q 0340. According to the notebook entry, North gave Calero at this time the code name "Barnaby."

24. *Congress Due for Latin Pointers at Home*, 4/17/84, The Washington Post, p. A16.

25. *Id.*

26. *Israeli Technical Aid to El Salvador Part of Meetings Here*, 4/21/84, The Washington Post p. A8.

27. HPSCI *Hearings*, 5/2/84, at 69-70.

28. *Id.* at 98.

29. *Id.* at 70.

30. *Id.* at 70.

31. *Id.* at 70-72.

32. Ex. APC-2, *Hearings*, 100-3.

33. See Chapter 3.

Nicaragua Rebels Reported to Raise Millions in Gifts, 9/9/84, New York Times, A1; *Private Aid Fuels Contras in Nicaragua*, Miami Herald, 9/9/84, p 1A.

35. HPSCI *Hearings*, 9/12/84, at 17-18. Rep. Fowler asked Clarridge: "I assume that you would know" whether foreign governments had provided substantial financial assistance. Clarridge responded: "That's true." Motley said that if other countries had donated, "they would come to us and say, hey, you know, we might be able to help, but what do you think?"

36. *Id.* at 13.

37. *Id.* at 14.

38. *Id.* at 18-19.

39. *Id.* at 20.

40. *Id.* at 23.

41. Ex. APC-2, *Hearings*, 100-3.

42. McFarlane Test., *Hearings*, 100-2, at 24.

43. Shultz Test., *Hearings*, 100-10, at 147-48.

44. *Id.*

45. McFarlane Test., *Hearings*, 100-2, at 23-24.

46. *Id.*, at 24.

47. *Id.*, at 37. Adm. Poindexter displayed similar priorities. He tried to ensure that CIA Director Casey would not learn about North's Contra-support activities because, he testified, Casey was vulnerable to direct questions at Congressional hearings.

48. McFarlane Test., *Hearings*, 100-2, at 150.

49. Addabbo Letter to Shultz, December 11, 1984. Reply from W. Tapley Bennett, Assistant Secretary of State for Legislative and Inter Governmental Affairs, January 15, 1985. *Contra Aid Disavowal Questioned: Addabbo Unsatisfied with Shultz Reply*, The Washington Post, 1/23/85, p. A19.

50. Ex. RWO-3, *Hearings*, 100-2, at 780-82. A copy of this letter was found in North's safe; it appears to be a draft. Calero did not recall receiving it. North's request of Calero seems to have worked. Calero remained tight-lipped about the Contras' funding. On August 11, 1985, for example, The Washington Post reported that Calero "declined to reveal the sources of his funding since CIA financing dried up a year ago." Calero also denied that North had been involved in Contra weapon purchases. *Rebel Leader Tells of Talks with U.S.* 8/11/85 p. A1.

51. Senate Committee on Foreign Relations Hearing at 908.

52. *Id.* at 909-910.

53. *Id.* at 910. The following month, Ambassador Motley repeated his assurances to the Defense Subcommittee of the House Committee on Appropriations. (*Hearings* at 1092)

54. See Chapter 2.

55. C/CATF Test., *Hearings*, 100-11, at 86-90.

56. SSCI Full Committee Hearing on the President's Report on Nicaragua, 4/17/85 at 18.

57. North Test., *Hearings*, 100-7, Part I, at 116.

58. Hearing Transcript at 11.

59. Hearing Transcript at 18.

60. Memorandum from North to Poindexter, *Press Revelations regarding North's Rule with Nicaraguan Resistance*, 6/3/85. Chardy published his story in June, 2 weeks after the first report on Oliver North. In the memo North also expressed his fear that NSC staffers were talking to reporters about the matter and recommended that Poindexter require NSC staff to take periodic polygraph examinations. [Ex. OLN-186, *Hearings*, 100-7, Vol. 3.

61. Singlaub Test., *Hearings*, 100-3, at 84.

62. *Private Groups Step Up Aid to Contras*, Washington Post, 5/3/85, p. A22.

63. Ex. 37, *Hearings*, 100-2, at 519.

64. Ex. 38, *Hearings*, 100-2, at 529.

65. *Marine Plays Key Role on Foreign Policy*, Washington Post, 8/11/85, p. 1. North had appeared once before in the press in connection with the Contras. On January 18, the Miami Herald reported that North had indirectly helped the

rebels obtain SAM-7 missiles, one of which shot down a Sandinista helicopter the month before. North, according to the article, "suggested to private contra fund-raisers," including Jack Singlaub, "the possibility of steering the guerrillas toward an arms market source" where they could purchase missiles and arrange for training. (*U.S. Helped Contras Get Missiles,* 1/18/85, Miami Herald, p. 1A.)

66. *White House Reportedly Gave Advice to Contra Fund Raisers.* AP Wire, 6/10/85.

67. *U.S. Found to Skirt Ban on Aid to Contras.* Miami Herald, 6/24/85, p. 1A.

68. *Nicaraguan Rebels Getting Advice from White House on Operations.* New York Times, 8/8/85, p. A1.

69. Weekly Compilation of Presidential Documents, 8/12/85, Vol. 21, No. 32 at 972.

70. *Rebels Move Back Into Nicaragua,* 8/9/85, The Washington Post, p. A1.

71. *McFarlane Aide Facilitates Policy.* The Washington Post, 8/11/85, p. A1.

72. Ex. 40A, *Hearings*, 100-2, at 546 (Barnes letter); Ex. 41, *Hearings*, 100-2, at 559 (Hamilton letter).

73. Ex. 41D, *Hearings*, 100-2, at 581 (letter from Durenberger and Leahy).

74. N3371. See also Ex. 41B, *Hearings*, 100-2, (2nd letter from Hamilton with specific questions).

75. Ex. 41A, *Hearings*, 100-2, at 560.

76. In a PROF message to North and Poindexter on September 3, McFarlane wrote: "I have sent you both separately a draft letter I have composed to answer Lee Hamilton's letter on Ollie's activities." [N3265] With minor changes, that draft became the letter sent to Hamilton 2 days later. McFarlane's PROF note also appears to indicate that he wanted to keep discussion of the responses to Congress limited. McFarlane wrote to North: "Please do not share either this note or the separate draft with anyone. . . . Please bring me any edits you have. Ollie, don't send me any PROF notes about H." PROF notes from North to McFarlane were routed through other NSC staff officers. Under Poindexter, North would be able to send PROF messages directly.

77. McFarlane Test., *Hearings*, 100-2, at 127.

78. McFarlane Test., *Hearings*, 100-2, at 215.

79. North Test., *Hearings*, 100-7, Part I, at 176-77.

80. Ex. 41A, *Hearings*, 100-2, at 560.

81. Ex. JMP-7a, *Hearings*, 100-8.

82. Poindexter Test., *Hearings*, 100-8, at 82-83.

83. McFarlane Test., *Hearings*, 100-2, at 73.

84. Memo to Poindexter, 8/20/85, subj: "Barnes Request." N29803-4.

85. *Id.*

86. *Id.*

87. *Id.*

88. McFarlane Test., *Hearings*, 100-2, at 73. Thompson Deposition 3/9/87 at 36, 4/28/87 at 3, 10.

89. McFarlane Test., *Hearings*, 100-2, at 73.

90. Ex. 32, *Hearings*, 100-2, at 466.

91. *Id.*, at 468.

92. *Id.*, at 469.

93. *Id.*, at 470.

94. McFarlane Test., *Hearings*, 100-2, at 30.

95. See version of memo numbered N44994-N44999.

96. Ex. 33, *Hearings*, 100-2, at 471.

97. *Id.*, at 472.

98. *Id.*

99. McFarlane Test., *Hearings*, 100-2, at 31.

100. Ex. 33, *Hearings*, 100-2, at 475.

101. Ex. 35, *Hearings*, 100-2, at 492.

102. *Id.*, at 494.

103. *Id.*

104. *Id.*, at 495.

105. McFarlane Test., *Hearings*, 100-2, at 109-11.

106. Ex. 36, *Hearings*, 100-2, at 510.

107. *Id.*, at 512.

108. *Id.*

109. *Id.*, at 513.

110. McFarlane Test., *Hearings*, 100-2, at 35.

111. Ex. 37, *Hearings*, 100-2, at 519.

112. *Id.*, at 520.

113. *Id.*, at 521.

114. *Id.*

115. *Id.*

116. *Id.*, at 522.

117. Ex. 38, *Hearings*, 100-2, at 529.

118. *Id.*, at 530.

119. *Id.*, at 532.

120. *Id.*

121. *Id.*

122. Ex. 31, *Hearings*, 100-2, at 463.

123. North Memo to McFarlane, "Timing and the Nicaraguan Resistance Vote," N40301.

124. Ex. 71, *Hearings*, 100-2, at 753.

125. McFarlane Test., *Hearings*, 100-2, at 73-76, 117-18.

126. *Id.*, at 74.

127. Ex. 37, *Hearings*, 100-2, at 521.

128. McFarlane Test., *Hearings*, 100-2, at 74.

129. *Id.*, at 75.

130. *Id.*

131. McFarlane Test., *Hearings*, 100-7, Part II, at 204.

132. McFarlane Test., *Hearings*, 100-2, at 75-76. Evidence indicates that another document was altered in 1985. An altered version of the document, "The Nicaraguan Resistance: Near-Term Outlook," dated May 31, 1985 (Ex. 38, *Hearings*, 100-2 at 529), was found by investigators. The altered version was also typed on stationery available only in 1985, indicating that it had been altered in 1985. In the major change, the following paragraph is deleted:

> In short, the political and military situation for the resistance now appears better than at any point in the last 12 months. Plans are underway to transition from current arrangements to a consultative capacity by the CIA for all political matters and intelligence, once Congressional approval is granted on lifting Section 8066 restrictions. The only portion of current activity which will be sustained as it has since last June, will be the delivery of lethal supplies.

It was replaced with:

> In short, the political and military situation for the resistance now appears better than at any point in the last 12 months. Plans are underway to transition from ad hoc arrangements to a consultative capacity by the CIA for all political matters and intelligence, once Congressional approval is granted on lifting Section 8066 restrictions. (Ex. FH-6A, *Hearings*, 100-5).

133. North Test., *Hearings*, 100-7, Part I at 172.

134. *Id.*, at 173.

135. *Id.*, at 174.

136. *Id.*

137. Ex. 40B, *Hearings*, 100-2, at 549.

138. Ex. 41C, *Hearings*, 100-2, at 579.

139. McFarlane Test., *Hearings*, 100-2, at 115-16.

140. North Test., *Hearings*, 100-7, Part I, at 79; Ex. 71, *Hearings*, 100-2, at 753; North's calendar.

141. For more detail, see Chapter 2.

142. Ex. 41C, *Hearings*, 100-2, at 576.

143. North Test., *Hearings*, 100-7, Part I, at 167.

144. Ex. 41A, *Hearings*, 100-2, at 561.

145. North Test., *Hearings*, 100-7, Part I, at 166. North also acknowledged that the following statement, in the September 5 letter to Hamilton, was false: "We did not solicit funds or other support for military or paramilitary activities, either from Americans or other parties."

146. See Chapter 3.

147. Ex. 41C, *Hearings*, 100-2, at 572.

148. North Test., *Hearings*, 100-7, Part I, at 167.

149. McFarlane Test., *Hearings*, 100-7, Part II, at 203-05; 100-2 at 157-58.

150. Ex. 41C, *Hearings*, 100-2, at 572.

151. North Test., *Hearings*, 100-7, vol. 1 at 167.

152. McFarlane Test., *Hearings*, 100-2, at 75.

153. *Id.*, at 165.

154. *Id.*

155. *Id.*, at 75.

156. Ex. 40A, *Hearings*, 100-2, at 546.

157. Ex. 41, *Hearings*, 100-2, at 559.

158. Ex. 37, *Hearings*, 100-2, at 519.

159. Leahy, letter, "Dear Fellow Vermonter" (September 9, 1985), S001286.

160. Recollection of meeting in notes Durenberger shared with Independent Counsel investigators during interview, see: file with Senate Office (Doug Telly). Senate Intelligence Committee News Release, 9/5/85.

161. *McFarlane Denies Illegal Ties to Contras*, New York Times, 9/6/85.

162. Hamilton letter to Representative Leon Panetta, 9/18/85.

163. Memorandum of Interview with Steve Berry, then Associate Counsel, HPSCI, dated 10/15/87.

164. PROF, 9/20/85, "Subject: Contra Papers".

165. Ex. 40C, *Hearings*, 100-2, at 551.

166. *Id.*, at 551-52.

167. Ex. 70, *Hearings*, 100-2, at 752. Around this time, McFarlane discussed the Barnes request with White House Counsel Fred Fielding. In addition to discussing executive privilege issues, McFarlane testified that he took the documents gathered by the NSC staff to Fielding and told him that the documents were "extremely troubling in terms of interpretation of law." Fielding does not recall such a statement by McFarlane. [Fielding Interview]

168. McFarlane Test., *Hearings*, 100-2, at 119.

169. Memorandum of Interview of Barnes, dated 5/16/87.

170. Ex. 40D, *Hearings*, 100-2, Part I, at 553.

171. *Id.*

172. North Test., *Hearings*, 100-7, Part I, at 170-71.

173. Ex. 40E, *Hearings*, 100-2, at 558.

174. *Id.*

175. *Id.*

176. McFarlane Test., *Hearings*, 100-2, at 127.

177. SSCI *Hearings*, 12/1/86, at 148-49.

178. Ex. 45H, *Hearings*, 100-2, at 617-18.

179. Ex. 45I, *Hearings*, 100-2, at 619.

180. Sigur Test., *Hearings*, 100-2, at 293.

181. Ex. 46, *Hearings*, 100-2, at 620.

182. Ex. 45F, *Hearings*, 100-2, at 614.

183. McFarlane Test., *Hearings*, 100-2, at 122.

184. HPSCI *Hearing*, 12/10/86, at 139.

185. Ex. 63, *Hearings*, 100-2, at 686-87.

186. *Id.* at 689.

187. McFarlane Test., *Hearings*, 100-2, at 86.

188. Ex. 37, *Hearings*, 100-2, at 519-25.

189. McFarlane made the statements in his 1985 letters to the Intelligence Committees. He wrote Hamilton on October 7, 1985: "There is no official or unofficial relationship with any member of the NSC staff regarding fundraising for the Nicaraguan democratic opposition." (Ex. 41C, 100-2 at 576) "No one has been designated by the NSC or any other White House entity as official or unofficial contact for private or public or any other kind of fundraising for the Nicaraguan democratic resistance." (Ex. 41E, 100-2 at 584)

190. HPSCI, 12/10/86, at 111-112. At SSCI, 12/1/86 at 143 McFarlane testified that his earlier statement "remains the case." See also SSI 12/1 at 195.

191. SSCI 12/18/86, at 122-23. See also 139-40. The day before, Secretary Weinberger testified before the Senate Intelligence Committee that he had no recollection of discussing with anyone third-country funding of the Contras. [SSCI, 12/17/86 at 67-71.]

192. Ex. 60, *Hearings*, 100-2, at 678.

193. McFarlane Test., *Hearings*, 100-2, at 73.

194. Ex. 75, *Hearings*, 100-2, at 762-63. See also SSI 12/1, at 146-47.

195. Tower 2/21/87, at 62-63. See also House Foreign Affairs Committee, December 8, 1986, at 10-11.

196. Ex. BGS 9, *Hearings*, 100-5.

197. Thompson Dep., 7/24/87 at 3.

198. Sciaroni Test., *Hearings*, 100-5, at 8-9. Sciaroni's notes of the interview are at Ex. 3, *Hearings*, 100-5.

199. Sciaroni Test., *Hearings*, 100-5, at 17.

200. Sciaroni Test., *Hearings*, 100-5, at 9-11. Thompson told the Committee that he did not recall precisely which document he gave Sciaroni. He maintained that it would have been inappropriate to turn over the documents he gave to McFarlane without a written request from the Intelligence Oversight Board. Although he acknowledged that the documents raised questions about North's activities, Thompson maintained that those questions were answered when North personally assured him that he was not involved in supporting Contra military activities or in soliciting funds. Thompson Dep., 7/24/87, at 38-41.

201. Sciaroni Test., *Hearings*, 100-5, at 11.

202. North Test., *Hearings*, 100-7, Part I, at 158.

203. Sciaroni Test., *Hearings*, 100-5, at 11.

204. *Id.*, at 41.

Chapter 7

Keeping "USG Fingerprints"* Off the Contra Operation: 1986

In 1986, the Contra support project finally achieved a degree of operational success. By mid-year, weapons and other material were being dropped to Resistance troops inside northern Nicaragua; by fall, similar airdrops were being made in the South. Congress had appropriated funds for the humanitarian needs of the Contras, it had authorized third-country solicitation for humanitarian aid, and it had allowed the CIA to provide intelligence to the Resistance. But Congress had maintained the prohibition on lethal support. Following the pattern of 1984-1985, allegations in the media and independently obtained information prompted Congressional inquiries, which in turn were met with categorical denials by Administration officials, some of whom knew the statements to be misleading and false.

The expansion of the covert operation's activities in 1986 also created new problems for officials still seeking to maintain secrecy. In September, a new Costa Rican Government threatened to reveal the existence of the Santa Elena airfield, exposing the involvement of U.S. citizens and Government officials in providing support to the Contras. Administration officials mobilized quickly to squelch the threatened press conference. Successful at first, the officials were unable to prevent disclosure by the Costa Rican Government three weeks later. Concerned that reporters might discover the link between the airfield and U.S. officials, North immediately took steps to ensure that no "USG fingerprints" would be found on Santa Elena.[1]

In October, the Sandinistas shot down an Enterprise plane on a resupply mission (the Hasenfus flight). Administration officials, not all of whom knew the true facts, denied before Congress and to the media that the U.S. Government was involved in the Hasenfus flight. Even the President spoke out. With no protest from his National Security Adviser or others aware of the facts, the President told the American people: "[T]here is no government connection with that at all."[2]

For most of 1986, efforts to determine whether the U.S. Government was providing lethal support to the Contras despite the legal restrictions were thwarted by the same techniques used in 1985.

January to June 1986: Press Reports

Through the first quarter of 1986, Congressional and media attention on the NSC staff's involvement with the Contras abated. In Washington, Congressional Committees had accepted the categorical denials the previous fall by the National Security Adviser. In Central America, the resupply project was not fully operational and Resistance activities slowed. A New York Times reporter in the region in January found the "Nicaraguan guerrillas . . . back in their camps;" in early March, the correspondent described the Resistance as being "in its worst military condition since its formation in 1982."[3]

By the end of March, the Contras' fortunes began to shift, and articles again appeared discussing the sources of Resistance funds and supplies.[4] Some focused on charges that the Contras had received lethal support from American mercenaries and funds from drug trafficking; others explored how the Contras were spending the $27 million appropriated by Congress in August, 1985, for humanitarian aid.[5] By the end of April, North had reemerged as the focus of attention. The allegations in the new series of articles were almost always attributed to anonymous officials, and some of the details were incorrect. But the main charge—that U.S. Government officials had continued to provide lethal aid to the Contras despite the Boland Amendment—was accurate. The renewed reporting provided the context for a new round of Congressional inquiries that would begin at the end of June.

Focus on North

In an April 30, 1986, article headlined, "Colonel's Actions May Have Broken Contra Aid Ban," the Miami Herald provided what it called "the first glimpses at the inner workings of the well-oiled private contra support machine that—with White House encouragement—developed after Congress suspended contra aid." The article asserted that Oliver North

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*North's term, used in two PROF Notes to Poindexter dealing with the possible disclosure of the U.S. Government link to the Contra Operation. (Exhibits OLN-131 and OLN-307, *Hearings*, 100-7, vol. 3.)

had arranged a meeting between a potential donor and a Contra fundraiser. It quoted "administration officials" as saying that "North acted repeatedly on behalf of the contras, especially in channelling potential donors to the rebels." John Singlaub and Robert Owen were cited in the article as two "conservatives closely associated with the contras" who had frequent meetings with North. In the article, "[a]n administration official authorized to reply to queries" was quoted as saying that "Oliver North has not been involved in illegal activities."[6]

On June 8, the Miami Herald ran on page one the headline, "Despite Ban, U.S. Helping Contras." Quoting anonymous Administration and Resistance officials, the article reported that the Reagan Administration "continued secretly to assist anti-Sandinista rebels in finding weapons and plotting military strategy through a network of private operatives overseen by the National Security Council (NSC) and the CIA." According to the article, the system was supervised by North with "advice from" officers in the CIA Central American division. After enactment of the Boland Amendment, "private individuals were used as bridges between the administration and the rebels." The Administration "feels it has honored" Congressional restrictions "by channeling its involvement through private citizens." This belief was attributed to "two administration officials and a knowledgeable rebel leader."[7]

On June 22, the Miami Herald reported that the "controversial program to coordinate private aid to anti-Sandinista rebels through the National Security Council was approved by officials in the White House." This was attributed to "several current and former administration officials." The article went on to quote "one source," unidentified, as saying that McFarlane briefed Reagan on the proposal to aid the Contras and that the President verbally approved the plan. The Herald reported that McFarlane denied knowledge of any such plan to aid the Contras.[8]

Concern for Secrecy

As the Contra support operation expanded during 1986, the task of maintaining secrecy became more challenging. National Security Adviser John Poindexter, who admitted to the Committees, "I wanted to withhold information on the NSC operational activities in support of the Contras from most everybody,"[9] did what he could to conceal the NSC connection.

North oversaw two of the most important NSC "accounts," but Poindexter kept North's title artificially low because "we wanted to provide a significant amount of cover for Colonel North and his activities."[10] According to Poindexter, North's responsibilities warranted the title Special Assistant to the President, the third-level rank in the White House. Instead, he kept North as Deputy Director of Political Military Affairs.[11] "We didn't want to call public attention to Colonel North," Poindexter testified.[12]

In July, shortly after the renewal of Congressional inquiries, Poindexter tried further to downplay North's responsibilities. He apparently leaked to the Washington Times the story that North's position at the NSC staff was "precarious" and that "NSC soft liners" were maneuvering "to edge him out."[13] In a PROF Note sent the day the article appeared, Poindexter reassured North about his intentions: "I do not want you to leave and to be honest cannot afford to let you go."[14] He told North to call two reporters at the Washington Times and "tell them to call off the dogs." Poindexter wrote: "Tell them on deep background, off the record, not be published, that I just wanted to lower your visibility so you wouldn't be such a good target for the Libs [Liberals]."[15]

Poindexter directed North not to put "things in writing about his operational activities, especially with regard to the support for the Contras."[16] North had stopped writing "logged" memorandums—documents stored in the official NSC files—after Representative Barnes had sought access to such documents in the summer of 1985. North testified: "[W]e had . . . decided to take those kinds of documents out of the system altogether . . . so that outside knowledge would not necessarily be derived from having seen them."[17] Subsequent to the 1985 Congressional inquiries, written communications about the Contra operation between North and his superiors were done exclusively using "non-logged" memorandums and the PROF system. North had assumed that PROF notes, after their use, were erased from computer memory and irretrievable.[18]

Poindexter arranged for North to communicate with him directly, thereby preventing other NSC staff members from learning details of the Contra operation. Ordinarily, PROF messages to the National Security Adviser were channeled through other staff members. On August 31, 1985, two weeks after he had assigned North to draft the response to Representative Barnes, Poindexter sent North a message with the subject heading "Private Blank Check."[19] When North wanted to communicate with Poindexter directly, he sent a message in reply to the "Private Blank Check" note. Poindexter testified: "Otherwise . . . those messages were intercepted by the [NSC staff] Executive Secretary."[20]

Poindexter also stressed to North the need to avoid speaking of his secret operational activities with anyone, including other Administration officials. In May 1986, Poindexter learned that North had discussed his plan to offer the *Erria* to the CIA for use in a covert activity with Ken deGraffenreid, Senior Director of Intelligence Programs at the NSC, the officer who maintained NSC documents of the highest sensitivity. The *Erria* was a ship under North's control, purchased by the Enterprise for use in various covert operations. In a PROF he titled "Be Cautious," Poindexter directed North to maintain absolute silence about his activities:

> I am afraid you are letting your operational role become too public. From now on I don't want you to talk to anybody else, including [CIA Director] Casey, except me about any of your operational roles. In fact you need to quietly generate a cover story that I have insisted that you stop.[21]

Poindexter testified that he was particularly concerned about keeping Casey ignorant of the operation because the CIA Director could be called to testify before Congressional Committees.[22]

Poindexter also kept the existence of the covert operation hidden from officials who did not ordinarily testify before Congress, such as former Chief of Staff Donald Regan. Poindexter explained: "Based on my feeling that if we were going to keep this up and avoid more restrictive legislation, that we simply had to limit the knowledge of the details to those that had absolutely the need to know. I simply didn't think that he [Regan] had an absolute need to know."[23] In addition, Poindexter testified that he felt Regan "talked to the press too much. I was afraid he'd make a slip."[24] Despite Poindexter's directive, North kept the CIA Director apprised of everything, according to his testimony. But North shared Poindexter's desire to conceal U.S. Government coordination of Contra support activities from Congress and the American public. He told these Committees: "I didn't want to show Congress a single word on this whole thing."[25] In May, as Robert Dutton was brought in and the project became operational, North became concerned that the likelihood of disclosure was increasing. He described in a PROF to Poindexter "the urgent need to get the CIA back into the management of this program." He explained:

> The more money there is (and we will have a considerable amount in a few more days) the more visible the program becomes (airplanes, pilots, weapons, deliveries, etc.) and the more inquisitive will become people like Kerry, Barnes, Harkins, [sic] et al. While I care not a whit what they say about me, it could well become a political embarrassment for the President and you. Some of this can be avoided simply by covering it with an authorized CIA program undertaken with the $15M.[26]

The next month, as airdrops became more frequent, North tried to ensure that resupply activities in Central America could not be traced back to him or other U.S. officials. On June 16, he informed Tomas Castillo, a CIA Station Chief in Central America, that he had sent Rafael Quintero to Central America to facilitate a supply drop to the FDN. "I do not think we ought to contemplate these operations without him being on the scene," North wrote via KL-43. "Too many things go wrong that then directly involve you and me in what should be deniable for both of us."[27]

Shortly after this message to Castillo, Karna Small, the press liaison for the NSC staff, asked North to comment on allegations that would be broadcast in a CBS News program, "West 57th Street." Small sent a note to North saying she had declined the show's request to speak with North, but that since it would include interviews with people making charges about North, she should call back with a comment. She remarked, "I can't just give them the 'bullshit' response."[28]

The segment aired on June 25. It charged that "the White House secretly directed a private aid network to arm the Contras when it was illegal for the White House to do that." The show focused on John Hull, suggesting that he played an important role in helping the Contras from his ranch in Costa Rica. It also alleged that Robert Owen acted as "the NSC representative" to the Contras and their supporters in Costa Rica. Describing Owen as "the bag man for Ollie North," the report charged that he carried $10,000 a month from the NSC to John Hull for use in purchasing lethal and nonlethal supplies for the Nicaraguan Resistance. The segment also reported: "The White House today quoted Colonel Oliver North as calling the private aid network 'nonsense.' The White House also said, quote, 'The President never approved any such plan' [to aid the Contras]".[29]

Two days after the show aired, North sent a PROF to Karna Small:

> I have just had a chance to watch the W57th piece. As far as I am concerned, it is the single most distorted piece of 'reporting' I have ever seen. . . . The only charges made about the NSC are made by people who are in jail, on their way to jail or just out of jail. If this is supposed to be credible, then I'll eat my shirt.[30]

North acknowledged in the PROF that he knew Robert Owen, but denied the inaccurate charge that Owen was "paid off" $50,000. North did not comment on the charge, the substance of which was accurate, that Owen delivered to Central America money provided by North. Nor did he comment on the general allegation that he was aiding the Contras.

June 1986: New Congressional Inquiry

On June 4, Representative Ron Coleman of Texas introduced a Resolution of Inquiry (H. Res. 485), directing the President to provide documents and information about support for the Contras. In a public statement, the Resolution's author explained the need "to get at the truth" behind the widely publicized allegations: "[D]isturbing new reports that our own government officials may have deliberately violated the law that prohibited any open or hidden U.S. assistance for military operations inside Nicaragua [suggest that there] may have been an intentional disregard for our own democratic process."[31]

In a statement inserted into the Congressional Record, the author of the Resolution explained the information sought from the Administration:

> My resolution of inquiry seeks answers and information on two central questions. Did Lieutenant Colonel North develop and implement a plan for Contra funding in the event that Congress did adopt the Boland Amendment? . . . Second, what was the degree of Lieutenant Colonel North's involvement with the Contra high command before, during, and after the Boland Amendment became the law of this land. Did he assure the Contra generals that the administration would find a way to ensure continued funding and assistance even in the event of a congressional ban? Did he, as alleged, provide regular tactical and logistical assistance to the Contra high command on a regular basis? Did Lieutenant Colonel North then implement a sham network of intermediaries to filter his continued advice to the Contra generals in direct violation of at least the spirit of the Boland language?[32]

Representative Coleman said he introduced his Resolution "very reluctantly," adding: "No one can be allowed to operate above the law of this great country—least of all those officials obligated to defend our Constitution." He concluded by stating that the Resolution "touches upon areas of concern that go far beyond the question of one's position relative to Contra aid. Rather, this course of action goes to accountability and ensuring that one branch of our Government [does not] disregard . . . the other two."[33]

The Resolution of Inquiry directed the President to provide to the House information and documents in three areas:

1. Funds and Supplies: Information and documents on contacts between any NSC staff member and private individuals or representatives of foreign governments relating to the provision of funds and supplies to the Contras.[34]
2. Military Activities: Information and documents on contacts between any NSC staff member and any member of the Nicaraguan Resistance relating to Contra military activities.[35]
3. Singlaub, Owen & Hull: Information and documents on contacts between any NSC staff member and Robert W. Owen, Maj. Gen. John K. Singlaub, and John Hull.[36]

The Resolution was referred to the House Committees on Intelligence, Foreign Affairs and Armed Services. On June 25 and July 1, the Chairmen of the Foreign Affairs Committee and the Intelligence Committee requested comments from the President on the Resolution.

The Executive's Response

On July 21, Poindexter wrote the Chairmen of the three Committees "in reply to your letter to the President."[37] Poindexter testified that he "probably" did not show the letter to the President, but discussed the issue with him "in general terms . . . . I probably told him about the Resolution of inquiry and told him that we were opposed to it. He agreed."[38]

In the one-page letter, Poindexter first stated the Administration's opposition to the resolution of inquiry. He continued:

> Last fall, in an effort to cooperate with Chairman Barnes, my predecessor, Robert C. McFarlane, met with members of your committee and the House Foreign Affairs Committee. While I did not participate in these discussions, I understand that information on the specific issues raised in H. Res. 485, was provided to your Committee and that this information made it clear that the actions of the National Security Council staff were in compliance with both the spirit and letter of the law regarding support of the Nicaraguan resistance.
>
> Thank you for the opportunity to comment on H. Res. 485. I have forwarded similar letters to Chairman Fascell and Chairman Aspin and sincerely hope that this matter can finally be put to rest.[39]

Insisting that the letter was technically accurate, Poindexter acknowledged to the Select Committees that the letter "clearly withholds information."[40]

By any standard the response was misleading. First, the National Security Adviser implied in the letter that he accepted the view that the Boland Amendment applied to the NSC staff, and that the NSC staff under his tenure was not providing covert lethal support to the Contras. Poindexter referred explicitly to the information McFarlane had provided Congress that "made it clear that the actions of the National Security Council staff were in compliance with both the spirit and the letter" of the Boland Amendment. He did not disclose that he had authorized North to provide to the Contras precisely the kind of covert aid the Boland Amendment was intended to prohibit or that, as he put it, "We had been running this [Contra] operation on our own for a long period of time."[41]

Asked how he could reconcile the statement that the NSC staff was complying with the "letter and spirit" of the Boland Amendment with the actions

North had taken and that he had approved, Poindexter testified:

> I felt that the Boland Amendment did not apply to the NSC staff and I felt that indeed we were complying with the letter and spirit of the Boland Amendment. Now, it doesn't say that we are not helping the Contras. We were.[42]

In addition, Poindexter's letter implied that he had no dispute in 1985 with the categorical denials McFarlane gave Congress on allegations about North's activities. In fact, however, Poindexter was aware that North had taken over coordination of Contra-support activities after enactment of the Boland Amendment.[43] Moreoever, when the Barnes letter arrived at the NSC on August 17, 1985, it was Deputy National Security Adviser Poindexter who assigned North to draft the response, intending that North would conceal his true activities from Congress.[44] As Poindexter himself put it before these Committees, he intended with his letter to say "that the questions had been addressed by Mr. McFarlane in the previous year." [45] But McFarlane's denials had misled Congress the previous year, as Poindexter's letter misled Congress in 1986.

August 1986: North's Meeting with Members of Congress

In response to the Resolution of Inquiry, the House Intelligence Committee sought to meet with North.[46] On August 6, North met with 11 members of the House Intelligence Committee in the White House Situation Room.[47] North began the session with a presentation about his activities. The description echoed closely McFarlane's letters the year before to Representatives Hamilton and Barnes: North's principal mission was to coordinate contacts with the Contras; a main purpose of his job was to assess the viability of the Nicaraguan Resistance as a democratic organization; and he explained to Contra leaders the limitations on U.S. support as imposed by the Boland Amendment. According to a memorandum based on notes taken at the meeting, North said "that he did not in any way, nor at any time violate the spirit, principles or legal requirements of the Boland Amendment."[48]

In response to specific questions, North denied that he had raised funds for the Contras or offered them military advice. North told the Members that his relationship with Robert Owen was "casual," that Owen never took guidance from him. He stated that he had not been in contact with John Singlaub at all in 1985 or 1986.[49]

By his own testimony, North lied to the Members of the Intelligence Committee at this meeting:

> A: . . . I will tell you right now, counsel, and all the Members here gathered, that I misled the Congress. I misled—
>
> Q: At that meeting?
>
> A: At that meeting.
>
> Q: Face to face?
>
> A: Face to face.
>
> Q: You made false statements to them about your activities in support of the Contras?
>
> A: I did.[50]

At the conclusion of the meeting, according to an observer, Representative Hamilton "expressed his appreciation for the good-faith effort that Admiral Poindexter had shown in arranging a meeting and indicated his satisfaction in the responses received."[51] On August 12, Hamilton wrote Representative Coleman that the House Intelligence Committee would not move forward with the Resolution: "Based on our discussions and review of the evidence provided, it is my belief that the published press allegations cannot be proven."[52]

Authority to Lie

North conceded in his testimony that Poindexter did not give him specific prior authority to make false statements.[53] Before meeting with the Members of the House Intelligence Committee, North expressed to his aide Robert Earl "concern . . . [about] what he was authorized to say" at the session.[54] According to Earl, North tried to obtain guidance from Poindexter but could not reach him.[55] Poindexter "was on leave, yes, out of the office" during this period, according to Earl, who testified: "My impression was that the leave was not accidental. The timing of the leave was just not a coincidence."[56] In his testimony, Earl characterized his observation as follows:

> Q: So that your impression of it, your observation of it, was that Colonel North had some information to protect and that he was being left to figure out how to protect it on his own?
>
> A: I think that's a fair statement.[57]

North and Poindexter differ on whether North had general authority from the National Security Adviser to lie at the session. North testified that he was acting under such authority: "I went down to that oral meeting with the same kind of understanding that I had prepared those memos in 1985 and other communications."[58] North added: "[Poindexter] did not specifically go down and say, 'Ollie, lie to the Committee.' I told him what I had said afterwards, and he sent me a note saying, "Well done." [59]

While Poindexter did send such a note, he claimed it did not indicate approval of North's lies. Poindexter acknowledged that North and he had a "general understanding that he [North] was to withhold information about our involvement." But Poindexter told these Committees that he did not know North had lied at his meeting with the Intelligence Committee, and that he had not expected North would do so.[60]

The evidence is clear, however, that Poindexter knew North had misled the Members of Congress. Poindexter attached his "well done" message to a PROF Note summarizing the meeting. The summary was written by Bob Pearson, one of two NSC staffers besides North who had attended the August 8 meeting in the Situation Room, and sent to Poindexter who forwarded the PROF note to North. The message began by declaring, "Session was success," and went on to describe North's presentation as "thorough and convincing." Pearson wrote:

> In response to specific questions, Ollie covered the following points:
>
> —contact with FDN and UNO aimed to foster viable, democratic political strategy for Nicaraguan opposition, gave no military advice, knew of no specific military operations.
>
> —Singlaub—gave no advice, has had no contact in 20 months: Owen—never worked from OLN office, OLN had casual contact, never provided Owen guidance.[61]

Poindexter testified that "by reading the summary in this note, I didn't attach any great significance to it because I knew that the questions and answers would be very carefully crafted."[62] Yet Pearson's PROF is clear that North told the Members he "gave no military advice" to the Resistance, that he had only "casual" contact with Owen and never "provided . . . guidance," and that he had "no contact" with Singlaub for 20 months.

Thus, even if Poindexter did not expressly authorize North to lie, he was aware of North's misleading statements and made no effort to correct them. Nor did he reprimand North. On the contrary, Poindexter congratulated North on his performance and on his success at deflecting the inquiry.

In his testimony, Poindexter acknowledged that he did not expect North to disclose the truth:

> I did think that he would withhold information and be evasive, frankly, in answering questions. My objective all along was to withhold from the Congress exactly what the NSC staff was doing in carrying out the President's policy . . . . I thought that Colonel North would withhold information. There was no doubt about that in my mind.[63]

September 1986: The Santa Elena Airfield

Soon after North had turned aside the Congressional inquiry, he learned of a new threat of exposure, this one involving the Santa Elena airfield in Costa Rica. It came just as Congress was taking steps to fund the Contras again.

The airfield at Santa Elena had been built with the covert assistance of several U.S. Government officials, including North, Tambs, and Castillo. Completed in early 1986, the airfield was originally intended to serve as an abort base and refueling site for resupply aircraft, but never became a crucial element in the operation. The new Costa Rican Government that took office in May 1986, requested that the field not be used to aid the Contras. Ambassador Tambs agreed, and the operation relied on alternative means to drop supplies to Resistance troops inside Nicaragua.[64]

North learned late Friday, September 5, that the Costa Rican Government planned a press conference about the airfield the next morning. Officials at the press conference, North was told, would reveal that Santa Elena had been used as part of an operation to resupply the Contras and that U.S. Government officials were involved with the airfield. In response, North mobilized several government officials to pressure high Costa Rican officials to call off the press conference.

North told a good deal of the story in a PROF sent the next day to Poindexter: "Last night at 2330 our Project Democracy rep. in Costa Rica called to advise" that the Arias Government would hold a press conference the next morning "announcing that an illegal support operation for the Contras had been taking place from an airfield in Costa Rica for over a year."[65] North wrote that Secord and CIA Station Chief Tomas Castillo would be "predominantly mentioned." From North's notebook it appears that he too was in danger of being mentioned at the press conference. The first entry relating to the incident reads: "0005—call from [Castillo]—Security Minister plans to make public Udall role w/ Base West [Santa Elena airfield] and allege violation of C[osta] R[ican] law by Udall, Bacon, North, Secord, et al."[66]

North immediately arranged a conference call with Elliott Abrams and Louis Tambs. North claimed in his PROF note to Poindexter that the three officials agreed that North would call President Arias and make two threats: if the press conference proceeded as scheduled Arias would not be permitted to meet with President Reagan and he "w[ould] never see a nickel of the $80M that [Agency for International Development Director M. Peter] McPherson had promised him" the day before.[67] North's notebook also reflected his intention to threaten a foreign government if necessary to maintain secrecy. The entry reads:

> 0008 - Conf. . . . Call to Elliott Abrams and Amb Lew Tambs
>
> - Tell Arias:
>
> - Never set foot in W.H.
>
> - Never get 5 [cents] of $80M promised by McPherson.[68]

According to North's PROF Note to Poindexter, Abrams and another Government official passed "the same word" to President Arias.[69] However, according to their testimony, neither North, Abrams, nor the other official called Arias.[70] North testified that he falsified the facts in his PROF note to "protect" the other officials involved.[71] He did not offer any explanation why he felt it necesary to hide the facts from Poindexter, who knew details of the resupply operation, including the existence of the airfield.

Ambassador Tambs did call President Arias. The purpose, he testified, was to "dissuade him from this press conference."[72] Abrams recalled instructing Tambs before the call to President Arias that revelation of the airfield would put at risk Arias' upcoming meeting with President Reagan.[73] Tambs testified that he merely told President Arias that it would not be prudent to hold the planned press conference in light of the pending case before the International Court of Justice.[74]

In his PROF note, North assured Poindexter that steps had been taken to ensure that the NSC-coordinated Contra operation would not be linked to the airfield: "As a precaution the Project a/c [aircraft] were flown to [another base] last night and no project personnel remain on site at the field."[75] The next day, Poindexter indicated his approval of North's actions. He wrote in a PROF: "Thanks, Ollie. You did the right thing, but let's try to keep it quiet."[76]

Airfield Revealed: Damage Control

Although the initial news conference was cancelled, the Costa Rican Government announced the existence of the airfield three weeks later. On September 26, the Costa Rican Interior Minister told reporters that his government had discovered and shut down an airfield that had been used for resupplying the Contras, for trafficking drugs, or both. Secord and North were not mentioned, although the name of the Enterprise Panamanian company that built the airfield, Udall Resources, Inc., was revealed, as was the pseudonym (Robert Olmstead) of William Haskell, the man who purchased the land.[77]

The airfield had not been used in the resupply operation for several months, and the press conference had compromised its location and purpose. Nonetheless, action was taken to ensure that the roles of U.S. officials and the Enterprise remained concealed. In a PROF note, North told Poindexter: "There are no USG fingerprints on any of the operation." Udall Resources, which North described as "a proprietary of Project Democracy," will "cease to exist by noon today." The company's resources—$48,000—were moved to another Panamanian account. And Udall's office in Panama "is now gone as are all files and paperwork." Olmstead, North added, "is not the name of the agent—Olmstead does not exist."[78]

In a second PROF note to Poindexter written that day, North blamed the failure to head off the press conference in part on the absence of Ambassador Tambs, who was on leave. North wrote that Tambs "put this thing back in its box two weeks ago when I called you in the middle of the night to threaten that Arias would not get in the door of the oval office if this came out."[79] North's PROF continued with a lengthy slur directed against Costa Rican officials who exposed activities in their own country.

North concluded the message:

> Believe we have taken all appropriate damage control measures to keep any USG fingerprints off this and with Elliott and [CIA Chief Castillo], have worked up appropriate "if asked" press guidance.[80]

The press guidance went to Poindexter for approval on September 30.[81] The guidance, which according to the cover memo had been coordinated with Elliott Abrams, the CIA Chief of the Central American Task Force (C/CATF) and Richard Armitage, Assistant Secretary of Defense for International Security Affairs, consisted of answers to two likely questions.

The first potential question and suggested answer were:

> [Question:] Did U.S. personnel supervise construction of the airstrip in Northern Costa Rica?
>
> [Answer:] The U.S. Embassy in San Jose, Costa Rica, has reported that during the Administration of Former President Monge the Ministry of Public Security was offered the use of a site on the Santa Elena Peninsula which could be used as an extension of the civil guard training center at Murcielago. The site included a serviceable airstrip which could have supplemented the small one which is located near the training center. The offer was reportedly made by the owners of the property who had apparently decided to abandon plans for a tourism project. The Embassy has no information on the Ministry's decision concerning the offer.[82]

The answer concluded: "No U.S. Government funds were allocated or used in connection with this site nor were any U.S. Government personnel involved in its construction."[83] The press guidance thus concealed the involvement in the airfield's construction of North, Tambs, and Castillo.

The suggested answer in the press guidance to the second possible question was also misleading:

> [Question:] Was the airstrip intended for use by the Contras?
>
> [Answer:] The Government of Costa Rica has made clear its position that it will not permit the use of its territory for military action against neighboring states. The U.S. Government respects that position.

In fact, the airfield had been used to help the Contras. The Costa Rican Government had already revealed that the airfield's purpose had been to help the Contras, to traffic drugs, or both. Among the officials who had helped prepare the guidance, Abrams and CIA Central American Task Force Chief acknowledged knowing that the airfield was intended to help the Contras and that U.S. citizens—if not Government officials—were involved.[84] North and Poindexter, to whom the press guidance was sent for approval, knew the airfield was part of the covert operation to help the Resistance.[85]

The steps taken to keep reporters from finding "USG fingerprints" on the airfield were successful for the time being. Not until October 24 did evidence emerge suggesting ties between the airfield and the U.S. Government. That revelation would come from Eugene Hasenfus after he was shot down and captured by the Sandinistas.[86]

The Hasenfus Downing

On the morning of October 5, 1986, one of the aircraft belonging to the Enterprise left its operational base with 10,000 pounds of ammunition and gear for FDN forces inside northern Nicaragua. William Cooper was in command, Wallace "Buzz" Sawyer was the co-pilot, and a 17-year-old FDN fighter was handling radio communication with the troops on the ground. Also on board, as the "kicker" who would actually drop the supplies to forces waiting below, was Eugene Hasenfus.

Within a few hours, the aircraft was reported missing. Officials later learned that the plane had been hit by a Sandinista SAM-7 missile over Nicaraguan territory. Three crew members were killed. Hasenfus survived and was captured by the Sandinistas.

The Sandinistas found in the wreckage, and showed reporters, an identification card issued to Hasenfus by the air force in the operational base's host country identifying him as an "adviser" in the "Grupo U.S.A." group at the base, and a business card belonging to an official at the NHAO office in Washington. They also found and displayed an ID card issued to Cooper by Southern Air Transport.[87]

The U.S. Government Connection

The Hasenfus flight was part of the resupply operation coordinated by North with the support and approval of the President's National Security Adviser. North acknowledged in testimony about the flight: "I was the U.S. Government connection."[88] James Steele, a U.S. Military Group Commander in Central America; Lewis Tambs, the U.S. Ambassador to Costa Rica; and Tomas Castillo, a CIA Station Chief in Central America, all provided assistance to the secret operation to support the Contras. Yet, virtually every newspaper article on the incident in the days after the downing would quote senior Government officials, including the President himself, denying any U.S. Government connection with the flight. And within a week, high Government officials would offer the same categorical denials before Congressional Committees.

The Initial Response

When the Sandinistas shot down the Hasenfus plane, North was in West Germany negotiating with the Second Channel. He returned to Washington within 48 hours of the downing to help deflect inquiries about the flight, leaving Albert Hakim behind to complete his negotiations.

Castillo, however, recognized immediately that the Hasenfus crash could lead to disclosure of the operation. Before the downing was even confirmed, he wrote to Robert Dutton via KL-43:

> Situation requires we do necessary damage control. Did this A/C [aircraft] have tail number? If so, is it the same one which refueled several times at . . . Please advise ASAP. If so, we will have to try to cover quickly as record of tail number could lead to very serious implication.[89]

Two days later, plans were made at a Restricted Interagency Group (RIG) meeting in which Abrams and CIA Central American Task Force Chief (C/CATF) participated to ensure that the U.S. Government would not be implicated by the flight.[90] A PROF from NSC staff member Vincent Cannistraro to Adm. Poindexter described decisions made at the meeting. Among them, Cannistraro wrote, "UNO to be asked to assume responsibility for flights and to assist families of Americans involved." Also, the group decided that press guidance would be prepared "which states no U.S.G. involvement or connection, but that we are generally aware of such support contracted by the Contras."[91]

A few days later The New York Times reported: "Nicaraguan rebels took full responsibility today for the flight of a military cargo plane that was downed over Nicaragua last week." A "senior Administration official" was quoted in the story as saying that the U.S. Government had asked the rebels to take responsibility. While denying that any such request was made, Bosco Matamoros, UNO's Washington-based spokesman, told the reporter, "There was no United States government connection."[92] Similar denials by Administration officials would soon follow. North was not at the RIG meeting, but he testified that the guidance stating no U.S. Government connection was "not inconsistent with what we had prepared as the press line if such, if such an eventuality occurred."[93]

The Denials

The President: There is no evidence the President knew of U.S. involvement in the Hasenfus flight. But the National Security Adviser and officials on the NSC staff did know. Also, the day of the downing, Felix Rodriguez called Col. Sam Watson in Vice President Bush's office, suggesting to him that North was involved with the flight.[94] Donald Gregg, Assistant to Vice President Bush, earlier had been alerted to the possibility that North was linked to the resupply operation.

Nevertheless, the President was permitted to deny any U.S. Government connection with the flight. In an exchange witn reporters on October 8, the President praised the efforts to keep the Contras armed, comparing resupply efforts to those of the "Abraham Lincoln Brigade in the Spanish Civil War." But when asked whether the Hasenfus plane had any connection with the American Government, the President replied, "Absolutely none." He told reporters:

> There is no government connection with that at all . . . We've been aware that there are private groups and private citizens that have been trying to help the Contras—to that extent—but we did not know the exact particulars of what they're doing.[95]

The Secretary of State: On October 7, Secretary Shultz told reporters that the Hasenfus aircraft was "hired by private people" who "had no connection with the U.S. Government at all."[96] He was quoted on two national network news programs that evening as saying, "The people involved were not from our military, not from any U.S. Government agency, CIA included."[97] On October 10, Shultz reiterated this denial while at the Reykjavik Summit with the President. Asked during a Today Show interview about Hasenfus' statements that he worked with CIA employees on the resupply operation, Shultz said:

> [D]on't forget that this man is under arrest and is saying things under those conditions. I have said, on the basis of checking with both the Defense Department and the CIA, that I am informed by both those agencies that he is not an employee of theirs and they are not connected with this operation.[98]

Secretary Shultz testified that the U.S. Government involvement with the Hasenfus flight was a "surprise" to him,[99] and the record shows that two National Security Advisers frequently failed to confide in him or give him accurate information. Shultz said he based his denials on a "general understanding" that "there was no problem" with North's activities, because Congressional inquiries into North's activities came up empty. Moreover, Abrams testified that he gave categorical assurances to Shultz that there was no U.S. Government involvement in the Hasenfus flight, and that neither North nor anybody else on the NSC staff was involved in the provision of lethal assistance to the Contras.[100]

North claimed in testimony that Shultz "knew what I was doing" to support the Contras, citing a single instance where the Secretary at a reception "put his arm around my shoulder, and told me what a remarkable job I had done keeping the Nicaraguan Resistance alive."[101] Shultz testified, however, that he merely told North that he appreciated North's work "to keep up the morale of these [the Contra] leaders. . . . But that was the sum and substance of it. To build on that remark this superstructure of implication is entirely unwarranted."[102]

Assistant Secretary of State for Inter-American Affairs: Elliott Abrams was the primary spokesman for the Administration about the Hasenfus flight. His categorical denials of U.S. involvement were not limited to the State Department; he did not hesitate to tell reporters that no Government agency was tied to the Hasenfus flight, including the NSC staff. Typical of his statements during this period were the following, made on the CNN Evans & Novak show which aired October 11:

> EVANS: "Mr. Secretary, can you give me categorical assurance that Hasenfus was not under the control, the guidance, the direction, or what have you, of anybody connected with the American government?"
>
> ABRAMS: "Absolutely. That would be illegal. We are barred from doing that, and we are not doing it. This was not in any sense a U.S. government operation. None."[103]
>
> NOVAK: "Now, when you say gave categorical assurance, we're not playing word games that are so common in Washington. You're not talking about the NCS [sic], or something else?"
>
> ABRAMS: "I am not playing games."
>
> NOVAK: "National Security Council?"
>
> ABRAMS: "No government agencies, none."[104]

Abrams was no less categorical in denials to Congressional Committees. He testified three times during this period. On October 15, Abrams testified alone before the House Foreign Affairs Subcommittee on Western Hemisphere Affairs. On October 10, he testified before the Senate Foreign Relations Committee, and on October 14, before the House Intelligence Committee. On these two occasions, he was accompanied by Clair George, the CIA's Deputy Director for Operations; and the Chief of the CIA's Central American Task Force.

During the House Intelligence Committee appearance, the following exchange occurred:

> HAMILTON: ". . . Just to be clear, the United States Government has not done anything to facilitate the activities of these private groups, is that a fair statement? We have not furnished money. We have not furnished arms. We have not furnished advice. We have not furnished logistics."
>
> GEORGE: "Mr. Chairman, I cannot speak for the entire United States Government."
>
> HAMILTON: "Can you, Mr. Abrams?"
>
> ABRAMS: "Yes, to the extent of my knowledge that I feel to be complete, other than the general public encouragement that we like this kind of activity."[105]

As Abrams later acknowledged to these Committees, this statement was "completely wrong."[106] Abrams testified that he was unaware that North was involved with the Hasenfus flight, insisting that he was just another person deceived by North.[107]

North, on the other hand, included Abrams with other officials who, he said, had tried to keep the Contra operation secret. He testified: "I am sure that others like Mr. McFarlane and Admiral Poindexter and Director Casey and Elliott Abrams and the Chief of the Central American Task Force and others were trying to weigh in their souls what would happen to those [involved in or assisting the operation] . . . if the American Government stood up and announced it."[108] Noting that Abrams had asked North to help raise money to retrieve the bodies of the dead crewmembers, North said, "Why would he turn to me if he didn't know I was doing it?"[109]

Abrams testified that he did not specifically call North to ask for such assistance, but that those issues merely "came up in the conversation."[110] Moreover, Abrams maintained he had sufficient reason to believe North was not involved in the Hasenfus flight. He noted first that McFarlane had categorically denied to Congress that North was providing military support to the Contras. Abrams conceded that those denials were made a full year before the Hasenfus shootdown, but said that based on his work with North in the Restricted Interagency Group (RIG) throughout 1986, he "had no reason whatsoever to believe that he was violating the law."[111]

North claimed, however, that his Contra-related activities were discussed at some RIG meetings.[112] In his testimony, North specifically mentioned only one RIG meeting, initially asserting that Abrams attended.[113] North's notebook entry of that meeting, however, indicates Abrams was not present. Nonetheless, North maintained that Abrams knew details of his Contra-support activities. An entry in North's notebook for April 25, 1986, suggests that North and Abrams discussed "support for S. front," the fact that the "air base [was] open in C[osta] R[ica]," and "100 BP's [Blowpipe missiles]."[114] North testified that he did not specifically recall that conversation, "but do not deny that I discussed those [items listed in North's notebook] at various points in time with Mr. Abrams and others."[115] (Abrams was not asked about this notebook entry.)

Moreover, the third key member of the RIG, the CIA Chief of the Central American Task Force (C/CATF), testified that he was "taken aback" by Abrams' categorical denials of North's involvement.[116] While he insisted that he did not want "to impeach" Abrams' testimony, C/CATF told these Committees: "I thought he [Abrams] would have a broad brush understanding, as did a lot of other people, Ollie was in and around those things."[117]

Abrams argued in defense of his statements that he or someone on his staff had checked with other key agencies—the Central Intelligence Agency (CIA) and the Department of Defense (DOD)—and verified that no U.S. officials were involved with the Hasenfus flight.[118] In their testimonies, two key CIA officials—the C/CATF and the Deputy Director for Operations—mentioned no call from Abrams' office, and testified they were surprised by Abrams' categorical denials.[119]

Similarly, Abrams noted that soon after the crash, while North was out of the country, he called an NSC staff officer and received assurances that the NSC staff was not involved in the Hasenfus flight.[120] Abrams said the official "may have been Mr. Earl."[121] Earl, however, was aware that the flight was part of "Democracy, Inc." and that North played an important role in that organization.[122] (Earl was not asked about a call from Abrams.)

During the period he was making his denials, Abrams spoke with North. But Abrams did not ask whether North was involved with the Hasenfus flight, despite the fact that Abrams, in his words, "knew that he [North] was monitoring" the private Contra support network.[123] Abrams said he did not ask North because "it was very clear that [confirming his involvement in the flight] would have been completely contradictory to what he had previously told me."[124] North had a different explanation: "He didn't have to ask me. . . He knew."[125]

Finally, while testifying before the House Foreign Affairs Subcommittee on Western Hemisphere Affairs on October 15, 1986, Abrams said that he did not believe anyone in the Government would know details about the flight:

> KOSTMAYER: "You have not been told by our Government, if indeed our Government knows, who organized and who paid for this particular flight?"
>
> ABRAMS: "I wouldn't separate myself from the Government. We don't know."
>
> KOSTMAYER: "Do you think there is anyone in the Government who does know?"
>
> ABRAMS: "No, because we don't track this kind of activity."[126]

Asked to reconcile this response with the fact that he knew North monitored the Contra aid network, Abrams told these Committees: "To say that Col. North was the person who knew the most about the private benefactors—which I thought, and think to be the case—is not to say that he could tell you the name of every one of them and could tell you everything that every one of them was doing each day."[127]

CIA Deputy Director For Operations: Clair George, appearing with Abrams at two sessions before Congressional Committees, limited his denials to the Central Intelligence Agency. Typical of his remarks was the following from his opening statement before the House Intelligence Committee on October 14:

> First I would like to state categorically that the Central Intelligence Agency was not involved directly or indirectly in arranging, directing or facilitating resupply missions conducted by private individuals in support of the Nicaraguan democratic resistance.[128]

In fact, at least one CIA official was directly involved in providing lethal supplies to the Contras in 1986. George testified before these Committees that he was unaware of this fact when he testified at the Hasenfus hearing. Nonetheless, in his testimony before these Committees, George admitted that his earlier statement was "wrong", and he offered an apology.[129]

George acknowledged that he knew in October 1986, that the NSC staff was "participating in some way in supplying the Contras"[130] but he allowed Abrams' categorical denials about the involvement of any U.S. officials to pass without comment. He explained:

> I was surprised Abrams made that statement. It was so categorical. The question is, should I leap up and say, 'hold it, Elliott, what about—excuse me, all you members of HPSCI, but Elliott and I are now going to discuss what we know about'—and I didn't have the guts to do it.[131]

Saying he was "overly taken with trying to protect the Central Intelligence Agency," George expressed regret that he had not responded in some way to Abrams' categorical denials.[132]

CIA Central American Task Force Chief: The C/CATF told these Committees he was aware that the categorical denials about any U.S. involvement in the Hasenfus flight were wrong. Asked whether he had "any doubt" who ran the Hasenfus flight, he said, "No."[133] However, testifying before the House Intelligence Committee on October 14, the C/CATF said: "We know what the airplanes are by type. We knew, for example there were two C-123s and C-7 cargos . . . . We knew in some cases much less frequently that they were flying down . . . into southern Nicaragua for the purposes of resupply, but as to who was flying the flights and who was behind them, we do not know."[134]

The C/CATF maintained before these Committees that his statement was not false because he did not know exactly who was behind the flights:

> A: "I want to make one thing very, very clear. I don't lie and I don't provide false answers, and if I'm put in a situation that is undeniable, I will find some way to avoid lying . . . . I didn't know who was flying those flights."
>
> Q: "Or who was behind them, is what you said?"
>
> A: "You could have put me on a rack and I couldn't have told you who the pilots were, who was managing them. I at that time suspected, but didn't know that General Secord was involved with them. I had no idea where the money was coming from. . . . It is not a lie."[135]

Generally, the C/CATF remained "uniquely silent," as he put it, during the hearings on the Hasenfus flight where he was a supporting witness: "I spoke when spoken to."[136] He told these Committees that he had decided that, as the junior official on a panel with Abrams and George, he would not speak up first:

> I could have been more forthcoming, but I frankly was not going to be the first person to step up and do that . . . . So long as others who knew the details, as much as I, who knew more than I, were keeping their silence on this, I was going to keep my silence. . . . I was a member of the administration team. I wasn't going to break ranks with the team. . . . My frame of mind was to protect, was to be a member of the team.[137]

The C/CATF told the Committees that he was "troubled" by his failure to speak out, but added, "There is not a lot I can do about it."[138]

Abrams' Brunei Testimony

In addition to denying any U.S. role in the Hasenfus flight, Elliott Abrams denied on several occasions that the U.S. Government actions had sought third-country funding for the Contras. His statements were made despite his previous involvement in soliciting funds from the Government of Brunei. In testimony before Congressional Committees in late 1986, Abrams repeatedly deflected questions about the Contras' funding, giving responses which were, in his word, "misleading."[139]

In an October 10 open hearing of the Senate Foreign Relations Committee, Senator Kerry asked Abrams whether Country 2 had provided assistance to the Resistance. Abrams replied: "I think I can say that while I have been Assistant Secretary, which is about 15 months, we have not received a dime from a foreign government, not a dime, from any foreign government." Asked whether the Contras had received funds, Abrams said: "I don't know. But not that I am aware of and not through us." He added at the hearing that if the Contras had approached a foreign government, "I think I would know about it."[140]

Appearing before the House Intelligence Committee on October 14, 1986, together with Clair George, Abrams again denied that third countries had aided the Contras:

> ABRAMS: "I can only speak on that question for the last fifteen months when I have been in this job, and that story about [Country 2], to my knowledge is false. I personally cannot tell you about pre-1985, but in 1985-1986, when I have been around, no."
>
> CHAIRMAN: "Is it also false with respect to other governments as well?"
>
> ABRAMS: "Yes, it is also false."[141]

Before these Committees, Abrams testified that he did not know about the Country 2 or Country 3 contributions. Although he had personally solicited Brunei, that country's donation had not been received at the time of his testimony, and therefore he explained it was technically true that the Contras had not received assistance from Brunei. Furthermore, Abrams testified that Brunei had been promised confidentiality, and "I did not believe I was authorized to . . . reveal that solicitation."[142]

On November 25, 1986, Abrams testified together with the CIA's C/CATF before the Senate Select Committee on Intelligence shortly after Attorney General Meese's press conference disclosing the diversion of funds from the Iran arms sales to the Contras. He was again asked about reports of third-country funding:

> BRADLEY: ". . . Did either one of you have any knowledge or indication that the contras were receiving funds from . . . Mid-Eastern sources?"
>
> ABRAMS: "No."
>
> C/CATF: "No."
>
> BRADLEY: "Did either one of you ever discuss the problems of fundraising—"
>
> ABRAMS: "Let me add to that, Senator. I spoke to Dick Murphy, Assistant Secretary of State for Near Eastern Affairs, probably in the course of the summer, to ask him if he thought I could raise any money from Middle Eastern sources. He was rather discouraging as to whether we would be able to do it, and so we never tried. . . ."
>
> BRADLEY: "Now, you did not discuss with anyone else in the Executive Branch the possibility of receiving funds from . . . any . . . Middle Eastern source?"
>
> ABRAMS: "That's correct. I never—once I had that conversation with him, that was the end of it."[143]

Again, Abrams maintained that this testimony was literally correct because Brunei was not a Mid-Eastern country.[144] In his Senate Intelligence Committee appearance, Abrams was also asked whether he discussed third-country funding with members of the NSC staff:

> BRADLEY: "Did either one of you ever discuss the problems of fund raising by the Contras with members of the NSC staff?"
>
> ABRAMS: "Well, yes. I mean, I think—I can't remember a specific day, but certainly the question—the fact, which now appears to be slightly mysterious, that they never had any money, we discussed—you know, it came up all the time, because they were always running out of everything. So the question came up, sure."
>
> BRADLEY: ". . . So let me ask it again. Did either one of you ever discuss the problems of fund raising by the Contras with members of the NSC staff?"
>
> ABRAMS: "No, I can't remember."
>
> BRADLEY: "Well, you would say gee, they got a lot of problems, they don't have any money. Then you would just sit there and say, what are we going to do? They don't have any money. You never said, you know, maybe we could get the money this way?"

> ABRAMS: "No. Other than the conversation I have—other than the Middle Eastern thing which I recounted to you. We're not—you know, we're not in the fundraising business. . . ."
>
> BRADLEY: "Were you completely ignorant of all fundraising activities by the Contras?"
>
> ABRAMS: "No. Certainly not in the—I knew for—I mean—I don't think I knew anything that wasn't—I am trying to think if I knew anything that wasn't in the newspaper, that is, I knew certainly that Singlaub was raising money for the Contras. I knew that others were raising money for the Contras. I mean, using the Contras in a very general sense. For example, Friends of the Americas raises money for medical relief and things like that. I knew that was happening. I didn't know what Singlaub was raising or how or what he did with it when he got it. I was, until today, fairly confident that there was no foreign government contributing to this. But I knew nothing, still don't know anything about the mechanisms by which money was transferred from private groups that have been raising it, to the Contras."[145]

Abrams maintained before the Select Committees that these statements were "technically correct" because he was asked about "fundraising by the Contras" and the Brunei solicitation was fundraising by the United States for the Contras.[146] However, in his exchange with Senator Bradley, when asked whether he was ignorant of all fundraising "by the Contras," Abrams did not limit his responses to his knowledge of fundraising by the Contras. He specifically mentioned fundraising for the Contras by John Singlaub and by the group, Friends of the Americas.

Finally, in his Senate Select Committee testimony, Abrams distanced the State Department from Contra-related fundraising. He stated: "We don't engage—I mean the State Department's function in this has not been to raise money, other than to try to raise it from Congress."[147]

In his testimony before these Committees, Abrams acknowledged that he intended to prevent the Members of Congress from learning about the solicitation of Brunei:

> Q: In fact, your approach on November 25 . . . was that unless the Senators asked you exactly the right question, using exactly the right words, they weren't going to get the right answers. Wasn't that the approach?
>
> A: That is exactly the correct description of what I did on that date . . .
>
> Q: And, as you have said . . . it would have been a very easy thing to have stopped the whole shooting match by simply saying Senators you are now getting into an area that I am not authorized to discuss?
>
> A: It would have been relatively easy. It would have been the right thing to do. . . .
>
> Q: And so unless the Senators knew the facts in advance so they could frame their question in exactly the right words, they wouldn't find out and they didn't find out. Isn't that what happened?
>
> A: Correct. That is exactly what happened.[148]

Abrams testified that after his November 25 testimony, he realized that he had "failed to disclose the solicitation of Brunei," and asked for permission to "go back and tell the Committee there had indeed been another solicitation." Abrams attempted to reach Senator Bradley, who had posed the question, to explain that there had, in fact, been a solicitation which he had failed to mention in this testimony. Failing to reach Bradley, he conveyed the message to a member of the Senator's staff. When Abrams appeared again before the Senate Intelligence Committee on December 8, he was asked to explain his answers to the Committee as a whole. Shown a transcript of his earlier statements, Abrams admitted they were misleading but attempted to defend them as technically accurate. After a recess, Abrams apologized to the Members, having been advised by Senator Boren to do so.[149]

He made no similar effort to correct his testimony in October before the Senate Foreign Relations Committee or the House Intelligence Committee.

Conclusion

Throughout the period of Congressional restrictions on lethal aid to the Contras, Administration officials were asked repeatedly whether the U.S. Government was in any way providing such support. In every instance, officials responded to the inquiries with evasive answers or categorical denials. Some of these officials made their statements as part of a deliberate attempt to conceal what they knew about U.S. Government support for the Nicaraguan Resistance.

These Committees found no direct evidence suggesting that the President was a knowing participant in the effort to deceive Congress and the American public. But the President's actions and statements contributed to the deception.

Congressional Committees overseeing the implementation of the Boland Amendment repeatedly sought to determine how the Contras were being funded. The President knew that Country 2 had provided substantial sums of money to the Resistance; he had personally discussed such a contribution with the leader of that country. But knowledge of this contribution was not widely shared within the Administration. Indeed, high-ranking State Department officials were permitted on several occasions to testify to Congress that it was not the policy of the United States to facilitate or encourage third-country donations, and that the Administration had not in fact done so. In one instance, following the enactment of the full prohibition Boland Amendment in October 1984, Ambassador Motley testified that "soliciting" or "encouraging" third country donations would violate the law.

In October 1986, the President denied that the U.S. Government had any connection with the Hasenfus flight, depicting it as part of a "private" operation. According to Poindexter the President "understood that the Contras were being supported and that we were involved in—generally involved in coordinating the effort."[150] These Committees found no evidence suggesting that the President knew his statements about the flight were false. He merely echoed the denials made the day before by State Department officials.[151] The National Security Adviser and others who knew the President's remarks were false appear to have made no effort to ensure that the President's statements were accurate and his knowledge complete. Poindexter testified he was too busy with the Reykjavik summit to correct the public record.[152]

Reasons for the Deception

North endeavored to explain the need for the deception by arguing that he was forced to weigh "the differences between lives and lies." He told the Committees:

> [t]he revelations of the actual details of this activity . . . would have cost the lives of those with whom I was working, would have jeopardized the governments which had assisted us, would have jeopardized the lives of the Americans who in some cases were flying flights over Nicaragua, would have put at great risk those inside Nicaragua and in Eastern Europe and other places where people were working hard to keep them alive. . . .[153]

North's justification for his decision to deceive does not withstand analysis. Congress is routinely briefed on covert operations where lives are at risk. Beyond that, Congress publicly debated and then approved the support of the Contras prior to enactment of the Boland prohibition. Operational details that would have put at risk the personnel conducting those operations were not publicly revealed. The same is true for the Congressionally approved operation in support of the Contras currently underway.

Even in 1985 and 1986, Congress was not asking about operational details such as drop-zone coordinates or flight paths. Members of Congress simply wanted to know whether it was true that the U.S. Government was providing lethal support to the Nicaraguan Resistance.

Indeed, North testified that his efforts were known widely outside the United States, even by this Country's enemies: "Izvestia knew it . . . . My name had been in the newspapers in Moscow, all over Daniel Ortega's newscasts. Radio Havana was broadcasting it."[154] Moreover, it was important to the success of the resupply operation that friendly countries in Central America knew that the U.S. Government support for the Contras was continuing so that they would not drive the Contras out of their countries.

Only the American people and the Congress were kept in the dark. Had they known, it would not have been lives at risk but the NSC staff's secret operation itself. Poindexter told these Committees he believed during his tenure in the White House that disclosure of the NSC staff operation would have almost surely triggered tighter restrictions on aid to the Contras.[155] McFarlane testified that disclosure of the "troubling" documents on North's activities which he had gathered in response to a Congressional inquiry "would be an extremely torturous, conflicting, disagreeable outcome and that I hoped we didn't come to that."[156]

North's contemporaneous actions and words provide clear evidence that the reasons for the deception had more to do with the political risk to the operation than to the physical risk to operation personnel. The record is clear that North's actions after the revelation of the Santa Elena airfield were motivated by a desire to prevent the discovery of "USG fingerprints," in his words, on the airfield.

In addition, in a May 1986, PROF note to Poindexter, North warned that Members of Congress were bound to become "more inquisitive" as the Contra operation's level of activity increased. He wrote: "While I care not a whit what they say about me, it could well become a political embarassment for the President and you."[157]

Chapter 7

1. Exhibits OLN-131 and OLN-307, *Hearings*, 100-7, Part III.

2. Weekly Compilation of Presidential Documents, No. 41 at 1349.

3. *Most Contras Reported to Pull Out of Nicaragua*, 1/30/86, New York Times, *Nicaragua Rebels, In Retreat, Viewed as a Reduced Threat*, 3/6/86, New York Times A1.

4. On March 20, for example, the Washington Post reported that the Contras had "mounted a series of raids against mostly economic targets in the northern Nicaraguan mountains in the past 10 days as debate quickened in Washington over military aid for their sagging guerilla war." [Washington Post, 3/20/86, *Contras Step Up Raids As U.S. Debate Waxes*, p. 6].

5. See *Group's Aid to Contras Probed*, The Boston Globe, 4/11/86, p 1; *Cocaine, Gun Charges Probed*, by the Associated Press in Washington Post, 4/11/86, p. A6; *Inquiry Reported Into Contra Arms*, AP story, the New York Times, p A3; Top *'Contras' Under Scrutiny For Corruption*, Christian Science Monitor, 4/11/86; *Reagan Asked About Allegations*, The Washington Post, 4/13/86 p. A38; 11 *Miami Banks Ordered to Open Files in Probe of Contra Spending*, 5/9/86, Miami Herald, p. 1; Similar articles on May 9 in The New York Times, The Baltimore Sun and other papers.

6. *Colonel's Actions May Have Broken Contra Aid Ban*, Miami Herald, 4/30/86, p. 8.

7. *Despite Ban, U.S. Helping Contras*, 6/8/86, Miami Herald, p. 1A; the charges were echoed in an Associated Press story which ran on June 11 in The Washington Post under the headline, *U.S. Abetted Contra Aid During Ban*.

8. *White House OKd Contra Aid Plan, Sources Say*, Miami Herald, 6/22/86 p. 26A.

9. Poindexter Test., *Hearings*, 100-8, at 95.

10. Poindexter Test., *Hearings*, 100-8, at 42.

11. Poindexter Test., *Hearings*, 100-8, at 42.

12. Poindexter Test., *Hearings*, 100-8, at 42.

13. *Going After North*, Washington Times, 7/15/86. A PROF Note sent that day to North strongly suggests that Poindexter leaked the story. Poindexter wrote in the PROF: "I just wanted to lower your visibility." And he gave North the name of two Washington Times reporters, suggesting that North call them to straighten the matter out. N12568. See also Ex. OLN- 295 and N12569.

14. PROF Note, 7/15/86 [N12568]. On July 19, 1986, the Miami Herald quoted a "senior administration official" saying that North would be reassigned and would no longer handle Contra matters.

15. PROF Note 7/15/86 [N12568].

16. Poindexter Test., *Hearings*, 100-8, at 48.

17. North Test., *Hearings*, 100-7, Part I, at 174. McFarlane denied that he gave such instructions to North. McFarlane Test., *Hearings*, 100-7, Part I, at 204.

18. North Test., *Hearings*, 100-7, Part I, at 27.

19. Ex. JMP-7, *Hearings*, 100-8.

20. Poindexter, *Hearings*, 100-8, at 196. McFarlane had not arranged for North to communicate with him directly using the PROF system.

21. Ex. OLN-191, *Hearings*, 100-7, Part III.

22. Poindexter Test., *Hearings*, 100-8, at 43, 48, 60.

23. Poindexter Dep., 5/2/87, at 208.

24. *Id.*

25. North Test., *Hearings*, 100-7, Part I, at 87.

26. Ex. OLN-10, *Hearings*, 100-7, Part III. "Kerry, Barnes, Harkins" referred to Senator John Kerry, Representative Barnes and Representative (now Senator), Tom Harkin.

27. Ex. OLN-89, *Hearings*, 100-7, Part III.

28. PROF Note from Small to North, date unknown [N17526].

29. Transcript of Broadcast.

30. PROF Note, 6/27/86 [N4951].

31. Text of statement. On June 21, Coleman gave the weekly Democratic radio address.

32. Congressional Record, June 25, 1986, p. E2264.

33. *Id.*

34. The resolution reads: "A complete list and description of any contact or other communication between Lieutenant Colonel Oliver L. North or any other member of the staff of the National Security Council and any private individual or any representative of a foreign government concerning the provision to the Nicaraguan resistance of any funding or other assistance from any source other than the United States Government (including assistance by any private group or individual or by any foreign government); and any document prepared by or in the possession of any member of the staff of the National Security Council concerning the provision of any such assistance, specifically including any document concerning any discussion of or involvement in private fund-raising activities on behalf of the Nicaraguan resistance by any member of the staff of the National Security Council."

35. The resolution reads: "A complete list and discription [sic] of and any document concerning any contact or other communication, directly or through intermediaries, since July 28, 1983, between Lieutenant Colonel Oliver L. North or any other member of the staff of the National Security Council and any member or representative of the Nicaraguan resistance, including any communications concerning the military strategy or tactics, coordination of the activities, or the military equipment or training needs of the Nicaraguan resistance."

36. The resolution reads: "A complete list and discription [sic] of and any document concerning any contacts or other communication since July 28, 1983, between Lieutenant Colonel Oliver L. North or any other member of the staff of the National Security Council and Robert W. Owen (who has served as a consultant to the Nicaraguan Humanitarian Assistance Office), Major General John K. Singlaub (United States Army, retired), John Hull (a United States citizen operating a ranch in northern Costa Rica)."

37. Ex. JMP-14, *Hearings*, 100-8.

38. Poindexter Test., *Hearings*, 100-8 at 102.

39. Ex. JMP-14, *Hearings*, 100-8 .

40. Poindexter Test., *Hearings*, 100-8 at 96.

41. Poindexter Test., *Hearings*, 100-8 at 53.

42. Poindexter Test., *Hearings*, 100-8 at 88.

43. Poindexter Test., *Hearings*, 100-8 at 73-70. See also Chapters 2 and 3.

44. Poindexter Test., *Hearings*, 100-8 at 83.

45. Poindexter Test., *Hearings*, 100-8 at 94.

46. On July 30, the House Armed Services Committee reported H. Res. 485 unfavorably. "Unlike the usual practice of the House in a resolution of inquiry," the report

explained "rather than requesting him [the President] to produce the specified materials, this resolution directs the production of information." This, the report said, "could place the President in an untenable position concerning compliance if the resolution were agreed to in its present form." (Rept. 99-724) As a result, the other two Committees to which it had been referred—Foreign Affairs and Intelligence—were no longer compelled to report the measure within 14 days. Nevertheless, the resolution was still pending under the rules of ordinary legislation, and Committee members wanted to give it full consideration. They deemed it necessary to meet with Oliver North.

47. In attendance at the 8:30 a.m. meeting with North were Chairman Hamilton, Representatives McCurdy, Kastenmeier, Daniel, Roe, Stump, Ireland, Hyde, Cheney, Livingston, and McEwen; Bob Pearson and Ron Sable of the NSC staff; and Tom Latimer and Steve Berry of Committee staff.

48. Ex. OLN-127, *Hearings*, 100-7.

49. Ex. OLN-126 and OLN-127, *Hearings*, 100-7. The Committee members came to the meeting believing that official Administration policy held that the NSC staff was covered by the Boland Amendment. The former National Security Adviser had told the House Intelligence Committee as much the year before, and the current National Security Adviser had indicated by his letter that the interpretation stood. North, in his statements to the Members, said nothing to the contrary. He stated that he had always acted in compliance with the letter and the spirit of the Boland Amendment. During the session, he admitted undertaking only those actions clearly permitted by all officials of the Executive Branch. He denied activities that Members who believed the Boland Amendment applied to the NSC would have interpreted as illegal.

50. North Test., *Hearings*, 100-7, at 176.

51. Ex. OLN-127, *Hearings*, 100-7.

52. Letter from Hamilton to Coleman, 8/12/86.

53. North Test., *Hearings*, 100-7, at 177-178.

54. Earl Dep., 5/22/87 at 102.

55. Earl Dep., 5/22/87, at 105-08.

56. Earl Dep., 5/22/87 at 106-07.

57. Earl Dep., 5/22/87 at 107. Poindexter testified: "Obviously with hindsight, it would have been prudent to have sat down and talked to him about that [the meeting with the Members of Congress] before he did it to provide more detailed guidance, but that was not the manner in which I was manning and directing Colonel North at the time." Poindexter Test., *Hearings*, 100-8 at 152.

58. North Test., *Hearings*, 100-7, at 178.

59. North Test., *Hearings*, 100-7, at 178.

60. Poindexter Test., *Hearings*, 100-8 at 152-156.

61. Ex. OLN-128, *Hearings*, 100-7.

62. Poindexter Test., *Hearings*, 100-8 at 104.

63. Poindexter Test., *Hearings*, 100-8 at 152.

64. See Chapter 2.

65. Ex. LAT-6, *Hearings*, 100-3.

66. Q2392.

67. Ex. LAT-6, *Hearings*.

68. North Notebooks, 9/6/86 [Q2392]. North's notebook also indicates that the C/CATF was aware of the threatened press conference.

69. Ex. LAT-6, *Hearings*, 100-3.

70. North Test., *Hearings*, 100-7, at 86-87; Abrams Test., *Hearings*, 100-5 at 24-26.

71. North Test., *Hearings*, 100-7, at 86-87.

72. Tambs Test., *Hearings*, 100-3, at 383.

73. Abrams Test., *Hearings*, 100-5 at 25.

74. Tambs Test., *Hearings*, 100-3 at 383.

75. Ex. LAT-6, *Hearings*, 100-3.

76. PROF Note, 9/7/86 [N12159].

77. *Costa Rica Closes Airstrip Near Nicaragua Border*, The New York Times, 9/25/86, p. 13.

78. Ex. OLN-307, *Hearings*, 100-7.

79. Ex. OLN-131, *Hearings*, 100-7.

80. *Id.*

81. Ex. OLN-132, *Hearings*, 100-7, Part III. The memorandum was "nonlog," meaning it had not been entered into the official NSC filing system. Poindexter had earlier directed North not to put in writing matters relating to the Contra operation.

82. Ex. OLN-132, *Hearings*, 100-7, Part III.

83. *Id.*

84. Abrams Test., *Hearings*, 100-5, at 20, 24-26; C/CATF Test., *Hearings*, 100-11 at 95-98.

85. See Chapter 2.

86. *Hasenfus Refers to Secret Airstrip*, The New York Times 10/24/86 p. 7; *Downed Airman Tells Predicament*, Los Angeles Times, 10/25/86 p. 1.

87. *Crash Survivor Described as Adviser in El Salvador*, The Washington Post, 10/8/86.

88. North Test., *Hearings*, 100-7, at 179.

89. KL-43 Message, RD00492.

90. The meeting was described in a PROF from Cannistraro to Poindexter: Ex. OLN-133, *Hearings*, 100-7.

91. Ex. OLN-133. *Hearings*, 100-7. On October 9 the following entry appears in North's notebook: "Call C/CATF, Cruz, Calero [about] press release. The A/C was providing humanitarian supplies to UNO fighters."

92. *Contras Take Responsibility for the Support Flight*, The New York Times, 10/14/86, P. A9.

93. North Test., *Hearings*, 100-7 at 179.

94. Ex. OLN-99, *Hearings*, 100-7.

95. Weekly Compilation of Presidential Documents, Vol. 22, #41, at 1348-9; See also *Elaborate System Supplies Contras*, Los Angeles Times, 10/9/86 p. 1; *Reagan on Downed Plane: Like Lincoln Brigade*, New York Times, 10/9/86, p. A8

96. *Reagan Administration Denies U.S. Link to Plane*, Washington Post, 10/8/86, p. A1; *Downed Plane Not Ours, Shultz Says*, Los Angeles Times, 10/8/86, P. 1.

97. Transcripts of news shows in "Radio-TV Defense Dialog."

98. *Id.*

99. Shultz Test., *Hearings*, 100-9 at 204.

100. Abrams Test., *Hearings*, 100–5 at 65–67.

101. North Test., *Hearings*, 100-7, at 149.

102. Shultz Test., *Hearings*, 100-9 at 202.

103. Ex. EA-25, *Hearings*, 100-5.

104. *Id.*

105. Ex. EA-28, *Hearings*, 100-5.

106. Abrams Test., *Hearings*, 100-5 at 65.

107. Abrams Test., *Hearings*, 100-5 at 63-69.

108. North Test., *Hearings*, 100-7, at 180-181.

109. North Test., *Hearings*, 100-7, at 165.

110. Abrams Test., *Hearings*, 100-5 at 64-65.

111. Abrams Test., *Hearings*, 100-5 at 65-68.

112. North Test., *Hearings*, 100-7, at 88.

113. North Test., *Hearings*, 100-7, at 88.

114. Ex. OLN-94, *Hearings*, 100-7.

115. North Test., *Hearings*, 100-7, at 156.

116. C/CATF Test., *Hearings*, 100-11 at 157.

117. C/CATF Test., *Hearings*, 100-11, at 156-157.

118. Abrams Test., *Hearings*, 100-5 at 63.

119. C/CATF Test., *Hearings*, 100-11 at 156-157; George Test., *Hearings*, 100-11 at 165.

120. Abrams Test., *Hearings*, 100-5 at 63-64.

121. Abrams Test., *Hearings*, 100-5 at 64.

122. Earl Dep., 5/22/87, at 149-50, 169-70.

123. Abrams Test., *Hearings*, 100-5 at 64.

124. Abrams Test., *Hearings*, 100-5 at 65.

125. North Test., *Hearings*, 100-7, at 179-80.

126. Transcript at 33.

127. Abrams Test., *Hearings*, 100-5 at 66.

128. Transcript at p. 4. Similar denials were issued by CIA spokeswoman Kathy Pherson to reporters. For example, on October 10 the Los Angeles Times quoted her as saying, "We didn't have anything to do with the guy [Hasenfus]. We didn't have anything to do with the plane. And we can say that, instead of our usual "No comment," because a plane that flies in and drops supplies would violate congressional restrictions. We have not and will not violate congressional restrictions." *Downed Flier Claims CIA Ties,* Los Angeles Times, 10/10/86.

129. George Test., *Hearings*, 100-11 at 216.

130. George Test., *Hearings*, 100-11 at 217.

131. George Test., *Hearings*, 100-11 at 217.

132. George Test., *Hearings*, 100-11 at 219-221.

133. C/CATF Test., *Hearings*, 100-11 at 120.

134. Transcript at 20-21.

135. C/CATF Test., *Hearings*, 100-11 at 121-122.

136. C/CATF Test., *Hearings*, 100-11 at 120.

137. C/CATF Test., *Hearings*, 100-11 at 122.

138. C/CATF Test., *Hearings*, 100-11 at 121, 132-133.

139. Abrams Test., *Hearings*, 100-5 at 74.

140. Ex. EA-29, *Hearings*, 100-5.

141. Ex. EA-28, *Hearings*, 100-5.

142. Abrams Test., *Hearings*, 100-5 at 85-86.

143. Ex. EA-30, *Hearings*, 100-5.

144. Abrams Test., *Hearings*, 100-5 at 72.

145. Ex. EA-30, *Hearings*, 100-5.

146. Abrams Test., *Hearings*, 100-5 at 73.

147. Ex. EA-30, *Hearings*, 100-5.

148. Abrams Test., *Hearings*, 100-5 at 74-75.

149. Abrams Test., *Hearings*, 100-5 at 77-79, 94, 146-149.

150. Poindexter Test., *Hearings*, 100-8 at 89.

151. Assistant Secretary Abrams testified that he had given Secretary Shultz categorical assurances of no U.S. Government involvement in the Hasenfus flight. (See fn. 100.) Abrams' explanation for his denials is discussed above.

152. Poindexter Test., at 160-61.

153. North Test., *Hearings*, 100-7, at 335.

154. North Test., *Hearings*, 100-7 at 119.

155. Poindexter Test., *Hearings*, 100-8 at 61.

156. McFarlane Test., *Hearings*, 100-2 at 118.

157. Ex. OLN-10, *Hearings*, 100-7.

Part III

The Arms Sales to Iran

Chapter 8

U.S.-Iran Relations and the Hostages in Lebanon

For many Americans, the most surprising and alarming aspect of the Iran-Contra Affair was President Reagan's decision to sell arms to Iran. Only a few years before, that nation had humiliated the United States. From November 1979 to January 1981, Iran held American diplomats hostage, while Iranian mobs in the streets of Tehran chanted slogans calling for the death of President Carter and the destruction of U.S. interests throughout the Middle East.

Since November 14, 1979, first in response to the hostage crisis and then because of the Iran-Iraq war, the United States had embargoed the sale of arms to Iran. Moreover, it had been the policy of the United States since December 1983 to pressure other governments, through "Operation Staunch," to stop the sale of arms to Iran in order to help bring an early end to the Iran-Iraq war.

The United States also opposed the transfer of arms to Iran because of its involvement in terrorist activities. Following repeated attacks against Americans and U.S. interests in Lebanon, the Secretary of State officially placed Iran on a list of countries supporting terrorism. Reagan Administration policy on terrorism was well known and was clearly stated by the President: "We make no concessions. We make no deals."[1]

Why did the Reagan Administration make a complete about-face on both of these publicly stated policies—to sell no arms to Iran and to make no concessions to terrorists? The background of recent U.S. policy toward Iran and of the seizure of American hostages in Lebanon provides a context in which to assess those policy reversals.

No Regional Guarantees

Partly in reaction to the war in Vietnam, the United States in 1969 began to shift to a worldwide policy of no longer directly guaranteeing the security of its regional allies. Instead, the United States would work with its friends to ensure that they had the military capability to defend themselves against internal subversion or external threat. Under the Nixon Doctrine, the United States looked to regional powers, such as Iran, to serve as guardians of American interests in distant corners of the world.

Iran's armed forces, under Shah Mohammed Reza Pahlavi, served as a deterrent to regional aggression in this conception of American policy. "Iran," President Carter declared during a 1977 trip to Tehran, "because of the great leadership of the Shah, is an island of stability in one of the more troubled areas of the world."[2] Equipped with the latest American weaponry and backed by a 350,000-man army, Iran had become America's policeman in the Gulf. The Shah relished the role and his power. "Nobody can overthrow me," he once boasted, "I have the support of 700,000 troops, all the workers, and most of the people. I have the power."[3]

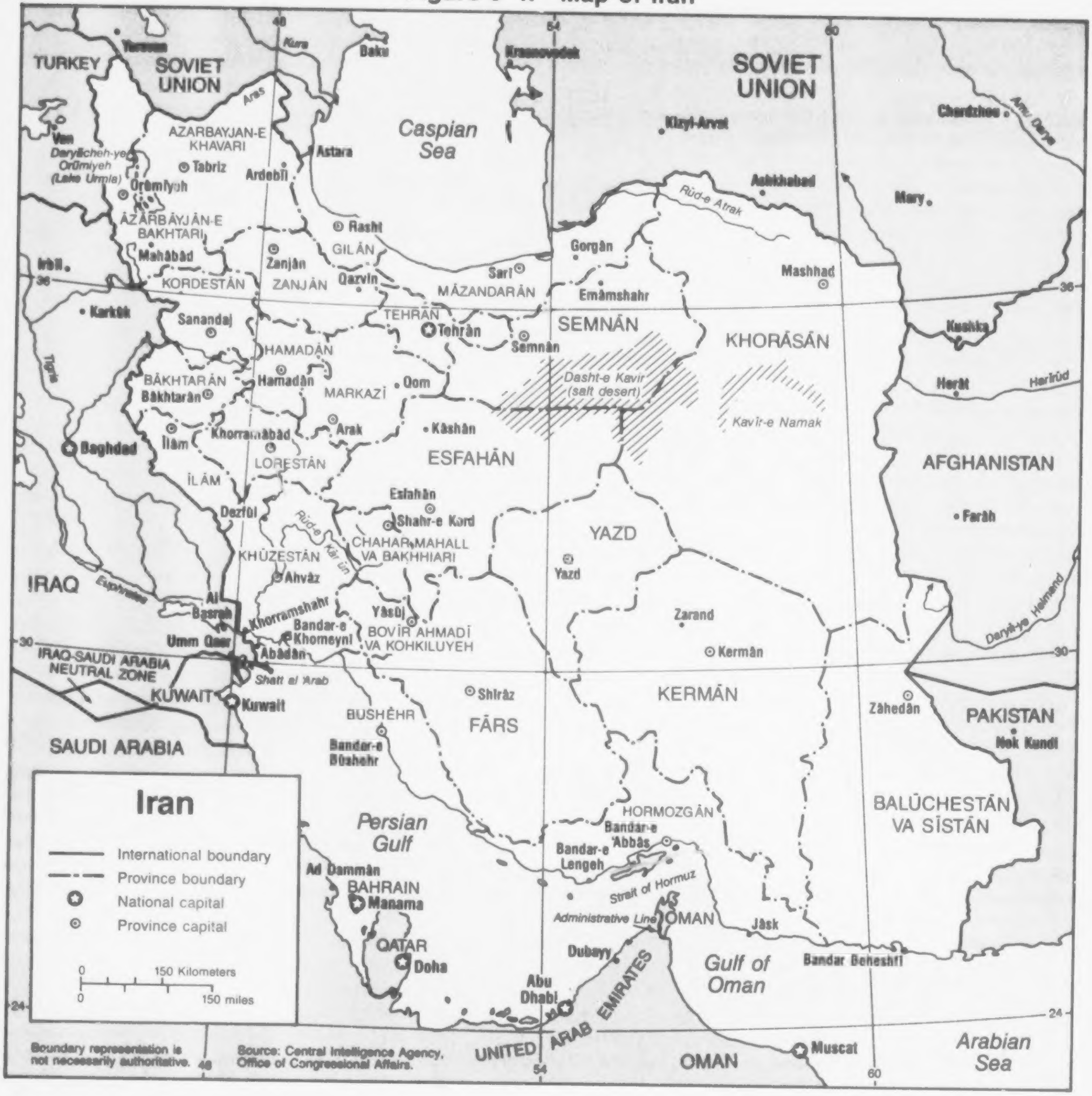
The Shah's power proved illusory. Growing protests by students, leftists, and, most importantly, Muslim religious opponents led in February 1979 to the Shah's overthrow and his replacement by a Shiite Muslim religious leader, Ayatollah Khomeini, who had been forced into exile in 1964, first to Iraq and then to France. The new regime was contemptuous of both the United States—the "Great Satan"—and the West. Fiery Shiite clerics accused the United States of imperialism and the murder of thousands during the Shah's rule. America's fortunes in Iran had crumbled.

If any doubt remained about the nature of the new regime, it was removed on November 4, 1979, when youthful Iranian militants—the Revolutionary Guards—stormed the U.S. Embassy in Tehran and took 66 American diplomats hostage. The hostage crisis lasted 444 days. It helped to drive one President from office and to elect another who pledged that America would not be so humiliated again.[4]

Arms Sales to Iran

In response to the Embassy seizure, the United States on November 14, 1979, embargoed all arms shipments to Iran as part of a general embargo on trade and financial transactions. Ten months later, however, the invasion of Iran by Iraq, on September 22, 1980, raised the question of who might ultimately be punished by this punitive measure. The prospect of an Iranian defeat and an increase in Soviet influence in the region was of concern.

Figure 8-1. Map of Iran



Iran
International boundary
Province boundary
National capital
Province capital
150 Kilometers
150 miles
TURKEY
SOVIET UNION
Yerevan
Kura
Baku
Krasnovodsk
Aras
Van
Daryācheh-ye Orūmiyeh (Lake Urmia)
AZARBAYJAN-E KHAVARI
Tabriz
Orūmiyeh
Ardebīl
Astara
Caspian Sea
Kizyl-Arvat
Chardzhou
Amu Darya
Ashkhabad
Mary
Rūd-e Atrak
ĀZARBĀYJĀN-E BAKHTARI
Mahābād
Rasht
GILĀN
Zanjān
ZANJĀN
Qazvin
Erbil
KORDESTĀN
Sārī
MĀZANDARĀN
Gorgān
Emāmshahr
Mashhad
Kirkūk
Sanandaj
TEHRĀN
Tehrān
Semnān
SEMNĀN
KHORĀSĀN
Kushka
HAMADĀN
Hamadān
MARKAZĪ
Qom
Dasht-e Kavir (salt desert)
Kavīr-e Namak
Herāt
Harīrūd
Tigris
BĀKHTARĀN
Bākhtarān
Īlām
Khorramābād
Arak
Kāshān
Baghdad
LORESTĀN
ESFAHĀN
AFGHANISTAN
ĪLĀM
Eşfahān
Dezfūl
Rūd-e Kārūn
Shahr-e Kord
CHAHAR MAHALL VA BAKHHIARI
YAZD
Farāh
KHŪZESTĀN
Yazd
Ahvāz
IRAQ
Euphrates
Al Başrah
Khorramshahr
Yāsūj
Bandar-e Khomeynī
BOVĪR AHMADĪ VA KOHKILUYEH
Zarand
Darya-ye Helmand
Umm Qasr
Ābādān
Kermān
IRAQ-SAUDI ARABIA NEUTRAL ZONE
Shatt al Arab
KUWAIT
Kuwait
Shīrāz
KERMĀN
Zāhedān
PAKISTAN
BUSHĒHR
FĀRS
Nok Kundi
SAUDI ARABIA
Bandar-e Būshehr
HORMOZGĀN
Bandar-e 'Abbās
BALŪCHESTĀN VA SĪSTĀN
Persian Gulf
Bandar-e Lengeh
Ad Dammān
BAHRAIN
Manama
Strait of Hormuz
Administrative Line
OMAN
Jāsk
QATAR
Doha
Dubayy
Gulf of Oman
Bandar Beheshtī
Abu Dhabi
UNITED ARAB EMIRATES
OMAN
Muscat
Arabian Sea
48
54
60
36
30
24

Boundary representation is not necessarily authoritative.

Source: Central Intelligence Agency, Office of Congressional Affairs.

Iran's armed forces were in disarray; the officer corps and enlisted ranks had been decimated by government purges and desertions. Iran's military arsenal was also in poor shape. Modern aircraft, armor, and naval vessels purchased by the Shah had been left unattended during the 24-month revolution and were badly in need of spare parts and maintenance. Adding to Tehran's vulnerability was the fact that most of the weaponry in the Shah's arsenal was of American manufacture, and the U.S. embargo prevented resupply. National Security Council (NSC) and Central Intelligence Agency (CIA) analysts concluded that the Ayatollah Khomeini was ill-prepared to meet Iraq in a modern war.

Against this background, the Reagan Administration's Senior Interdepartmental Group (SIG) convened on July 21, 1981, to discuss U.S. policy toward Iran. SIG members concluded "that U.S. efforts to discourage third country transfers of non-U.S. origin arms would have only a marginal effect on the conduct and outcome of the war, but could increase opportunities for the Soviets to take advantage of Iran's security concerns and to persuade Iran to accept Soviet military assistance."[5] While no agency representative argued in favor of U.S. action to encourage an increase in arms supply to Iran, some expressed concern that a rigid U.S. policy against all arms transfers to Iran would not serve overall U.S. interests.

The Joint Chiefs of Staff, however, strongly opposed arms sales to Iran, which they believed would represent a profound shift in U.S. policy that "would be perceived by the moderate Arab states as an action directly counter to their interests."[6] Similarly, they felt that any "[i]mprovement in the Iranian arms supply would intensify the war with Iraq" and possibly spill over into neighboring states. Administration policy against arms sales to Iran remained firm.

Despite the U.S. embargo, Iran obtained weapons and military support services on the thriving world arms market. Oil was often the medium of exchange in elaborate barter deals, and Persian Gulf trade became an irresistible lure for international arms merchants. The Reagan Administration listed no fewer than 41 countries that had provided Iran with weapons since the start of the war.[7]

As a result, by the spring of 1983, the tide in the Gulf war had turned in favor of Iran. A steady supply of munitions, artillery, and ground-to-air and ground-to-ground missiles had enabled the more numerous Iranian armed forces and Revolutionary Guards to expel Iraqi forces, seize and retain some small pieces of Iraqi territory, and shell the major city of Basra and the capital city, Baghdad. Once thought by Western analysts to be on the verge of collapse, Iran had rebounded from its earlier battlefield setbacks.

Operation Staunch

At this point the Administration decided to initiate Operation Staunch, a plan seeking the cooperation of other governments in an arms sales embargo against Iran. On December 14, 1983, the State Department instructed its Embassies in countries believed to be involved in arms trade with Tehran to urge their host governments to "stop transferring arms to Iran because of the broader interests of the international community in achieving a negotiated end to the Iran-Iraq war."

Within the U.S. Government, authorities increased surveillance of shipments of American equipment and spare parts destined (usually through intermediaries) for Iran. Between January 1984 and January 1987, the State Department sent more than 400 cables to American overseas missions urging compliance with Operation Staunch. Secretary Shultz personally urged member governments to work within the European Community to reduce the flow of materiel to Iran.

Reports persisted that Israel still actively supplied the Iranian military despite U.S. efforts to stop arms sales through Operation Staunch. Other reports hinted that U.S. and Israeli representatives met regularly to discuss Tehran's war needs. Widespread reports, particularly from the Middle East, also suggested that the United States was violating its own arms prohibitions. The effectiveness of Operation Staunch was uncertain, but Iran's military potential clearly grew.

The U.S. Government repeatedly and publicly reaffirmed its commitment to lessening the flow of armaments to Tehran. A typical public statement from the State Department, dated May 1985, noted that: "The U.S. does not permit U.S. arms and munitions to be shipped to either belligerent and has discouraged all free-world arms shipments to Iran because, unlike Iraq, Iran is adamantly opposed to negotiations or a mediated end to the conflict."[8]

Iran's Support of Terrorism

The long-suppressed Shiite community in Lebanon, with close religious and familial ties to Iran, had found inspiration in the rule of the Ayatollah Khomeini. In the aftermath of the Israeli invasion of Lebanon in June 1982, some Shiite groups in Lebanon used political kidnappings and terrorism against Americans and American institutions as retaliation against perceived U.S. support for the Israeli invasion and occupation of their country. The United States became aware in July 1982 that Iran was supporting groups in Lebanon, such as Islamic Jihad and the Hizballah (Party of God), that were suspected of terrorism.

United States Marines had been sent to Lebanon briefly in August and September 1982 to supervise the withdrawal of forces of the Palestine Liberation Organization (PLO) from Beirut and returned to Lebanon soon thereafter in the aftermath of the Sabra and Shatila massacres. The purpose of the U.S. presence in Beirut was to help support the Government of Lebanon in its efforts to restore stability and its authority throughout Lebanon. The U.S. troops came to be perceived in Lebanon as a partisan militia, however, working on behalf of the Maronite-and-Christian-controlled government.

A series of bold attacks followed against Americans and American interests throughout Lebanon. The U.S. Embassy in Beirut was destroyed in April 1983, killing 63, including 17 Americans. A suicide bombing on October 23, 1983, killed 241 Marines in their barracks in Beirut. This incident was followed in December by a series of bombing attacks against the U.S. and French Embassies in Kuwait. The 17 men who were apprehended in the Kuwait attack were tried and sentenced to prison. The release of these "Da'wa prisoners" (as they came to be known after a pro-Khomeini party with supporters in several countries) became a key demand of the Hizballah as attacks against U.S. targets and the taking of American hostages continued in Lebanon.

The Hizballah, a loosely structured movement centered on the Shiite clans of the Bekaa Valley, emerged as a principal opponent of the United States and the Western presence in Lebanon. The use of force—particularly terrorism—against Western interests in Lebanon was viewed by the more militant members of Hizballah as religiously sanctioned.

From the outset, U.S. intelligence recognized that the Hizballah was composed of competing political elements, not all of whom were controlled by Iran. But frustration mounted within the Administration in the aftermath of the Marine barracks bombing, the Kuwait Embassy attack, and the assassination on January 11, 1984, of the President of the American University in Beirut, Malcolm Kerr.

On January 20, 1984, the Secretary of State designated Iran a sponsor of international terrorism. This decision was followed 4 days later by the announcement that Iran would be subjected to U.S. Government regulations limiting the export of U.S. military equipment to "countries that have repeatedly provided support for acts of international terrorism."[9] The State Department assured Congress that "[t]he question of further controls under this rubric is currently under active review at senior levels of the Administration."[10] The Department announced these additional measures based upon what it termed convincing evidence of a broad Iranian policy furthering terrorism beyond its borders, including public statements by Iranian officials supporting those acts.

Hostage-Taking Begins

The hostage-taking that was to propel the Iran-Contra Affair began 6 weeks later.

Three Americans were seized in Beirut in 1984: Jeremy Levin, Beirut Bureau Chief for the Cable News Network, on March 7; William Buckley, CIA's Chief of Station, on March 14; and the Reverend Benjamin Weir, a Presbyterian minister who had lived in the Lebanese capital for 30 years, on May 8, 1984. Buckley's capture was of special concern for CIA Director Casey. It was suspected at the time—and later confirmed—that Buckley was being tortured, and Casey wanted to spare no effort to get him back.

Citing a continuing pattern of Iranian support for terrorism, the State Department imposed new restrictions in September 1984 on the export to Iran of aircraft, spare parts for aircraft, and high-powered outboard motors. The Department also banned all other goods and technology to Iran intended for a "military end-use or end-user."

The Administration staked out an increasingly tough public position on dealing with terrorists. Speaking in New York on October 25, 1984, Secretary Shultz called for "swift and sure measures" against terrorists, both to prevent attacks and to retaliate for them: "[W]e cannot allow ourselves to become the Hamlet of nations, worrying endlessly over whether and how to respond," he said.[11]

Yet the hostage-taking continued. Four Americans were seized in 1985: Father Lawrence Martin Jenco, Director of Catholic Relief Services in Beirut, on January 8; Terry Anderson, chief Middle East correspondent for the Associated Press, on March 16; David Jacobsen, Director of the American University Hospital, on May 28; and Thomas P. Sutherland, Dean of the American University's School of Agriculture, on June 9.

Throughout this period, the only positive development on the hostages came on February 13, when Jeremy Levin gained his freedom. It remains uncertain whether he escaped from, or was released by, his captors after nearly 11 months of confinement. Around the time that Levin was freed, the NSC, with the Joint Chiefs of Staff, created an interagency Hostage Location Task Force.

On June 14, 1985, Shiite terrorists struck again, hijacking TWA flight 847 and murdering one of its passengers, Navy diver Robert Stetham. National Security Adviser Robert McFarlane publicly stated: "It is my purpose to remind terrorists and to keep them on notice that no act of violence against Americans will go without a response."[12]

The President spoke on the same subject on June 30, 1985, "The United States gives terrorists no rewards and no guarantees. We make no concessions. We make no deals."[13]

These were strong and unambiguous words from the President and a senior American official. Yet a few weeks later, President Reagan authorized Israel to sell TOW antitank missiles to the government of the Ayatollah Khomeini, the Hizballah's spiritual leader. Seven months later he authorized the direct sale of arms to Iran.

Chapter 8

1. The New York Times, July 1, 1985, at A10.

2. President Jimmy Carter, remarks (Dec. 31, 1977), in: Public Papers of the Presidents of the United States, Book II, 2221 (1978).

3. The Washington Post (Mar. 6, 1978); U.S. News & World Report (June 26, 1978).

4. There have been allegations that officials of the 1980 Reagan campaign—in order to prevent a pre-election announcement by President Carter (an "October Surprise")—met with Iranian intermediaries and agreed to ship arms to Iran in exchange for a post-election release of hostages. Reagan campaign aides were, in fact, approached by individuals who claimed to be Iranian intermediaries about potential release of hostages, as were other campaign staffs. The Committees were told that the approaches were rejected and have found no credible evidence to suggest that any discussions were held or agreements reached on delaying release of hostages or arranging an early arms-for-hostages deal.

5. L. Paul Bremer, III, Executive Secretary, Department of State to Richard V. Allen, White House, Memorandum, Subj. Iran SIG Meeting of July 21, 1981, 8125833, S (Sept. 23, 1981), N33299.

6. Paul F. Gorman, Lieut. Gen., Assist. to the Chairman, JCS, Memorandum for Mr. L. Paul Bremer, III, Special Assistant to the Secretary and Executive Secretary, Department of State, Subj.: US Arms Transfer Policy Toward Iran, S, CM 1041-81 (Sept. 3, 1981), N33300.

7. The New York Times, Apr. 11, 1987, at 2.

8. U.S. Government. Department of State. "Iran-Iraq War," Gist (May, 1985).

9. 15 C.F.R. Section 385.4(d).

10. Developments In The Middle East, July, 1984: Hearings before the Subcomm. on Europe and the Middle East of the House Comm. on Foreign Affairs, 98th Cong., 2d Sess., 52 (July 25, 1984).

11. George Shultz, speech, "Terrorism and the Modern World," delivered at the Park Avenue Synagogue in Manhattan (Oct. 25, 1984); see The New York Times, at A12 (Oct. 26, 1984); "Shultz Says U.S. Should Use Force Against Terrorism," The New York Times, at A1 (Oct. 12, 1984).

12. Developments In The Middle East, June, 1985: Hearings Before the Subcomm. on Europe and the Middle East of the House Comm. on Foreign Affairs, 99th Cong., 1st Sess., 22 (June 19, 1985).

13. The New York Times, July 1, 1985, at A10.

Chapter 9

The Iran Arms Sales: The Beginning

In August 1985, the President decided that the United States would allow arms sales to Iran. The decision represented a reversal of U.S. policy against selling arms to Iran and, as it later turned out, against making concessions for the return of hostages. Yet it was made so casually that it was not written down, the President did not recall it 15 months later, and the Secretaries of State and Defense were not even told of it at the time.

The President's decision triggered a series of arms transactions with Iran that continued for 15 months. At the initial transaction, the Iranians established a pattern of dealing that never changed: Iran would agree to get the hostages freed in return for arms; once the arms arrived, the Iranians would demand still more weapons; only after another arms shipment would a single hostage—not a group, as promised—be freed. But, instead of breaking off the transactions, the Americans continued to accede to the Iranian demands. What follows is the story of how the arms sales began.

The Actors Take Their Places

Long before the President made his decision, the individuals and circumstances that propelled the sales were at work in Washington, Jerusalem, and Tehran.

Since the fall of 1984, the National Security Council (NSC) staff had been pressing other Government agencies to develop a plan for opening a relationship with Iran and moderating that government's anti-American stance. The State Department and the Defense Department opposed the notion, and while the Central Intelligence Agency (CIA) was favorably inclined, officials there said renewed relations hinged on the release of seven U.S. hostages held by the pro-Iranian Hizballah in Lebanon and on a pledge by Iran to stop terrorist activities.

In Jerusalem, officials were eager for better relations with Iran, for two very pragmatic reasons: commercial and diplomatic. Israel had friendly relations with Iran under the Shah. Despite revolutionary Iran's vow to destroy Israel, the Israelis regarded Iraq as a greater threat to their security than Iran. Israel's goal was to create conditions for the resumption of commercial and diplomatic relations with a post-Khomeini regime.

Tehran had its own agenda. Rhetoric notwithstanding—the United States was considered "The Great Satan" and Israel a blasphemy—Tehran wanted modern tanks and high-technology antitank and antiaircraft missiles to counter Iraq's Soviet-made fighter planes and modern tanks. It needed spare parts to maintain the arsenal of weapons that the Shah had purchased from the United States.

The unlikely catalyst for bringing these disparate parties together was Manucher Ghorbanifar—a resourceful Iranian merchant living in Paris who understood the intersection of interests and saw how the American hostages could be used as an incentive for the sale of missiles to Iran.

Ghorbanifar

Since fleeing Iran in 1979, Ghorbanifar had sought to make a career as a broker through whom Western governments could develop contact with Iran. By 1984, Ghorbanifar was well known to U.S. intelligence services, and details of his activities filled a thick file in the CIA's Operations Directorate. The CIA viewed Ghorbanifar with particular disfavor, but that did little to discourage the Iranian from trying to interest U.S. intelligence agencies in various schemes, all of which would financially benefit him.

His CIA file describes Ghorbanifar as an Iranian businessman and self-proclaimed "wheeler dealer" who, prior to the 1979 revolution, had been the managing director of an Israeli-connected Iranian shipping company. According to rumors, Ghorbanifar also was an informant for SAVAK, the Shah's intelligence service, and had a relationship with Israeli intelligence; but those relationships have never been confirmed.

Ghorbanifar's business permitted him to travel outside Iran, and, following the revolution, he chose Paris as his base of operations, particularly after he and his brothers, Ali and Reza, were implicated in an abortive July 9, 1980, coup attempt in Iran. Ghorbanifar apparently developed his own intelligence network and endeavored to sell his services to various Western governments. Ghorbanifar became a CIA reporting source in January 1980. Described by the

Agency as a "rumormonger of occasional usefulness," Ghorbanifar lasted as a source only until September 1981, when the Agency decided he was concerned solely with advancing his financial interests.[1]

Information generated by Ghorbanifar continued to reach the CIA, however, both directly and through other intelligence agencies. In January 1984, Ghorbanifar contacted U.S. Army Intelligence in West Germany with tales of "Iranian terrorist organizations, plans, and activities." [2] In mid-March, a CIA officer met with Ghorbanifar in Frankfurt to explore the data Ghorbanifar was offering. At that meeting, Ghorbanifar indicated he had information on the kidnapping, in Beirut, of CIA Chief of Station William Buckley. He identified an Iranian official (the Second Iranian), who would play a key role in the arms-for-hostages transactions a year later, as the "individual responsible" for the kidnapping.[3] He also described an Iranian plot to assassinate U.S. Presidential candidates.[4]

A CIA-administered polygraph examination of Ghorbanifar on this information indicated he was lying. Ghorbanifar gave no satisfactory explanation for the results.[5] Undeterred, he again approached the CIA in June 1984, this time trying to broker a meeting between the U.S. Government and another Iranian official (the First Iranian).[6] The First Iranian was also to be a key player in the arms-for-hostages transactions of 1985 and 1986. According to Ghorbanifar, the First Iranian was favorably disposed towards the United States.[7]

Again, Ghorbanifar was polygraphed, and again, the examination indicated he was lying.[8] This time, the CIA responded by publishing, on July 25, 1984, a rarely issued "Fabricator Notice," warning Agency personnel and other U.S. intelligence and law enforcement agencies that Ghorbanifar "should be regarded as an intelligence fabricator and a nuisance." [9]

Ghorbanifar Proposes to Ransom the Hostages

Ghorbanifar continued to seek a relationship with the U.S. Government. His first chance came in November 1984 when he met Theodore Shackley, a former Associate Deputy Director for Operations of the CIA who had retired from the Agency in 1978. On behalf of his "risk management" firm, Research Associates, Inc., Shackley maintained contact with the former head of the Shah's SAVAK Counterespionage Department VIII, General Manucher Hashemi. At the suggestion of Hashemi, Shackley traveled to Hamburg, West Germany, where he met with a group of Iranians, including Ghorbanifar, the First Iranian and a Dr. Shahabadi, chief of the Iranian purchasing office in Hamburg and purportedly a friend of Saudi entrepreneur and arms dealer Adnan Khashoggi. At one meeting, on November 20, Ghorbanifar told Shackley that for a price he could arrange for the release of U.S. hostages in Lebanon through his Iranian contacts. Ghorbanifar said he required a response on the "ransom deal" by December 7. Ghorbanifar added that he would not work with the CIA because the Agency was "unreasonable and unprofessional." [10] Upon his return to the United States, Shackley sent a memorandum about his meetings with Ghorbanifar to Lt. Gen. Vernon Walters, Ambassador-at-Large in the State Department and a former Deputy Director of the CIA.[11] Walters referred the memorandum to Hugh Montgomery, Director of Intelligence and Research in the State Department. Montgomery, in turn, passed the Shackley memorandum to Ambassador Robert B. Oakley, head of the State Department's counterterrorism efforts, and Assistant Secretary of State for Near Eastern Affairs Richard W. Murphy. Oakley and Murphy regarded the hostage ransom proposal as a "scam," and on December 11, 1984, Montgomery told Shackley that the State Department was not interested in pursuing the Ghorbanifar ransom proposal.[12]

Ghorbanifar Tries Again

Ghorbanifar still did not give up. Having failed with the CIA, the Army, and the State Department, he found another and ultimately more fruitful channel into the U.S. Government through Israel. A New York businessman, Roy Furmark, served as the contact point. Furmark had previously worked for Adnan Khashoggi, and was a friend of CIA Director William Casey. Furmark also knew Cyrus Hashemi, a naturalized U.S. citizen of Iranian extraction whom Furmark tried to interest in a number of business ventures.[13] In January 1985, Furmark and Ghorbanifar met while Furmark was in Europe to discuss business opportunities in Iran.[14]

Furmark later introduced Ghorbanifar to Hashemi and Khashoggi.[15] Ghorbanifar, at this time, was looking for sophisticated weapons for Iran, and Khashoggi suggested that Ghorbanifar try to develop access to the United States and its weapons through Israel. Sometime later, Khashoggi put Ghorbanifar and Hashemi in touch with an Israeli group: Al Schwimmer, an adviser to then Israeli Prime Minister Shimon Peres, and Ya'accov Nimrodi, an Israeli businessman with government service background.[16] Both Khashoggi and Hashemi saw the potential for huge profits if Ghorbanifar were to become the conduit for U.S. arms to Iran and gain control of trade between the United States and Iran.[17]

At Khashoggi's initiative members of the Israeli team met with Hashemi and Ghorbanifar in London, Geneva, and Israel in early spring. Weapons sales to Iran were discussed but the meetings produced nothing concrete.[18] In late April, Ghorbanifar proposed to one of the Israelis that he be permitted to purchase U.S.-manufactured TOW antitank missiles from Israel, and, in return, he would obtain the release of CIA

Beirut Chief of Station Buckley, then a hostage in Lebanon.[19]

Ledeen Gets Involved

At about that same time, NSC consultant Michael Ledeen was trying to persuade National Security Adviser Robert McFarlane to use him as an informal channel to get intelligence on Iran from Israel, using his close personal relationships with several high-ranking Israeli officials.[20] In March 1985, Ledeen met in Europe with a senior official from a western European nation who told Ledeen that the United States could play a significant role in Iran. The foreign official recommended that the United States contact Israel because the Israelis had the best intelligence resources on Iran.[21] Upon his return to the United States in early April, Ledeen proposed to McFarlane that he be authorized to meet with Israeli Prime Minister Peres and other Israeli officials to explore potential Israeli-U.S. cooperation on Iran.[22] Although the NSC staff told McFarlane that "none of us feel Mike should be our primary channel for working the Iran issue with foreign governments,"[23] they were impressed with Ledeen's access to Prime Minister Peres, and therefore recommended that Ledeen informally meet with the Israelis to express interest in developing "a more serious and coordinated strategy for dealing with the Iranian succession crisis."[24] McFarlane agreed.

Ledeen traveled to Israel in early May.[25] On May 3 he met with Prime Minister Peres and then with a former senior official of the Israel Defense Forces.[26] During the meetings, Ledeen said he was acting on McFarlane's behalf, although in a private rather than official capacity, and expressed interest in sharing intelligence on Iran. According to Ledeen, the Americans held hostage in Lebanon were not discussed at these meetings in early May.[27] An Israeli official, however, recalls Ledeen's telling him about offers by various Iranians to help get the hostages released.[28] According to Ledeen, the Prime Minister asked him to advise McFarlane that Israel wanted to sell artillery shells or pieces to Iran but would do so only if it received U.S. approval.[29]

The NSC Reconsiders Iran Policy

When he returned to the United States, Ledeen told NSC staff member Donald Fortier that the Israelis were interested in working with the United States on Iran. At the time, Fortier was working closely with CIA National Intelligence Officer for the Near East and South Asia, Graham Fuller, who was updating the Special National Intelligence Estimate (SNIE) on Iran at McFarlane's request.[30] A SNIE represents the U.S. intelligence community's short-term assessment of a given country or situation in response to a specific need. Both the SNIE circulated on May 20 and a memo submitted by Fuller three days earlier to CIA Director Casey, included a recommendation of arms sales through an ally as one of a number of options for pursuing an opening to Iran.[31] The NSC staff concluded that Israel should be that country, although Fortier continued to question whether Ledeen was the appropriate intermediary through which the United States should deal with Israel.[32]

On June 3, 1985, McFarlane approved a second Ledeen trip to Israel,[33] but Ledeen's return to Israel was delayed when Secretary of State George P. Shultz protested Ledeen's earlier trip.[34] Shultz had heard from the U.S. Ambassador to Israel that Ledeen had been in Israel talking to Israeli officials about obtaining intelligence on Iran, without notice to the U.S. Embassy.[35] Shultz complained to McFarlane that neither he nor the U.S. Ambassador to Israel had been informed of the trip, and pointed out that Israel and the United States had differing interests in Iran. He also questioned the wisdom of relying upon Israeli intelligence about Iran.[36] McFarlane told Shultz that Ledeen had taken the May trip "on his own hook." He also said he was "turning [the Iran initiative] off entirely."[37] In fact, McFarlane told Ledeen to postpone, not cancel, the trip.[38]

Major policy changes call for consultation with the Secretaries of State and Defense and an opportunity for the President to consider their views. McFarlane thus began the established process of interdepartmental policy formulation. He had earlier requested the CIA to prepare the updated SNIE on Iran, and in June he asked members of his staff to prepare a draft National Security Decision Directive (NSDD). An NSDD is a Presidential directive establishing policy in a particular area. It is the result of an analytical process, including discussions among the interested parties.

Fortier and Howard Teicher of the NSC staff submitted the draft NSDD to McFarlane on June 11, and on June 17, McFarlane circulated this draft to Secretary Shultz, Secretary of Defense Caspar W. Weinberger, and CIA Director Casey. The draft NSDD recommended, among other things, that anti-Khomeini factions in Iran should be supported, and that U.S. allies and friendly states should be encouraged to "help Iran meet its import requirements . . . includ[ing] provision of selected military equipment."[39] To bolster the NSC's analysis, McFarlane cited the CIA's earlier intelligence estimate that had recommended such arms sales, and warned of the Soviet threat to Iran.[40]

Only Casey endorsed the draft NSDD.[41] Secretary Weinberger wrote on the transmittal note accompanying the draft, "This is almost too absurd to comment on. . . . It's like asking Quadaffi to Washington for a cozy chat."[42] Weinberger's response to the National Security Adviser was less sarcastic but unambiguously negative.[43] Secretary Shultz's response was also negative. He criticized the idea of relaxing the arms embargo against Iran, warned against the danger of strengthening Iran, and disagreed with the notion that Iran was in danger of falling into Soviet hands.[44]

During the same period, the President was sharply critical of Iran. In a speech to the American Bar Association on July 8, 1985, the President declared Iran to be part of a "confederation of terrorist states . . . a new international version of Murder Incorporated." He added, "Let me make it plain to the assassins in Beirut and their accomplices that America will never make concessions to terrorists."[45]

The Discussions Continue

While the Secretaries of State and Defense were opposing any relaxation of the arms boycott of Iran, Israel was receiving different signals from the NSC staff. Ledeen testified that McFarlane had authorized him to tell Prime Minister Peres that Israel could engage in a one-time arms sale to Iran of artillery shells or pieces, "but just that and nothing else."[46] One of the Israeli participants reported to another Israeli participant, however, that the authorization conveyed by Ledeen from McFarlane was for a transfer of TOW missiles.[47]

By early June, the Israelis were considering a transaction linking the sale of TOWs to the release of the American hostages.[48] However, the Israelis were unwilling to proceed without evidence of a clear, express, and binding consent by the U.S. Government to the proposed transaction.[49]

On June 19, Ghorbanifar, accompanied by Furmark, met in Israel with the Israeli team. Ghorbanifar proposed that the Israelis sell 100 TOWs to Iran through him. He also agreed to set up a meeting with an Iranian official.[50]

The Israelis reported these developments to McFarlane. In late June, according to McFarlane's testimony, David Kimche, the Director General of the Israeli Foreign Ministry, became involved in the project. Kimche had an established relationship with McFarlane and Ledeen.[51] While in Washington for another purpose in early July, he briefed McFarlane on the ongoing contacts of Israeli and Iranian officials, and the Iranians' interest in establishing contact with the United States.[52] Kimche recommended that the discussions with the Iranians continue. McFarlane told Secretary Weinberger about the meeting, and Weinberger's military assistant, Lt. Gen. Colin Powell, recalled that McFarlane discussed both the sale of arms to Iran and the hostages.[53]

On July 8, 1985, members of the Israeli team met in Hamburg with Ghorbanifar, Khashoggi, Khashoggi's son-in-law, and the First Iranian. Before the meeting, Ghorbanifar told the Israelis that the sale of 100 TOWs was essential to enhance his credibility with Iran, and claimed that the sale would be followed by the release of the American hostages.[54]

Ghorbanifar described the First Iranian as a politically powerful individual in his own right, with close personal connections to Khomeini, and a leader of one of Iran's revolutionary organizations.[55]

At the meetings, the First Iranian spoke of the need for a party who could act as a bridge between Iran and the United States, of the threat of Soviet influence in Iran, and of the risks he had taken in meeting with Israel in order to promote an opening with the United States. The participants also discussed missiles and hostages.[56] The First Iranian promised to present a comprehensive written proposal within a week.

Shortly after that meeting, according to Ledeen's testimony, Schwimmer flew to Washington and met with Ledeen on July 11, 1985. He briefed Ledeen on Ghorbanifar's proposal to obtain the release of the American hostages in exchange for TOW missiles.[57] Ledeen then wrote McFarlane, "The situation [concerning Iran] has fundamentally changed for the better."[58] On July 13, he briefed McFarlane orally on the Israeli talks with the Iranians.[59]

After meeting with Ledeen, McFarlane cabled Secretary Shultz with a summary of the proposal conveyed by Israel:

> The short term dimension concerns the seven hostages; the long term dimension involves the establishment of a private dialogue with Iranian officials on the broader relations. . . . They [the Iranians] sought specifically the delivery from Israel of 100 TOW missiles. . . .[60]

McFarlane recommended to Shultz that the United States go forward with a tentative show of interest, although his admonition proved to be prophetic:

> Then one has to consider where this might lead in terms of our being asked to up the ante on more and more arms and where that could conceivably lead. . . .[61]

Shultz responded to the proposal with caution, recommending that "we should make a tentative show of interest without commitment." [62]

In the meantime, Israel awaited the United States' response on whether it was authorized to sell the TOWs.

The President Is Informed

McFarlane decided to take the matter to President Reagan, even though the President was in the hospital recuperating from surgery. By this time, the release of the hostages had become an immediate concern to the President. He had met with the hostage families for the first time in late June, and had been moved by the experience. On July 3, he had attended a National Security Planning Group meeting to discuss the hostages, and had come away frustrated at the lack of alternatives.

McFarlane met with the President at the hospital on July 18. Donald Regan, the White House Chief of Staff, was present.[63] What was discussed at this meeting is not clear: Apparently no one took notes. Regan did not recall any mention of arms at the meeting,[63a] and McFarlane's accounts have varied: More than a year later, on November 21, 1986, McFarlane wrote in a PROF note to Poindexter that the President "was all for letting the Israelis do anything they wanted at the very first briefing in the hospital."[64] But during the public hearings McFarlane stated that the President's position was that no U.S. owned items from the United [S]tates [could be] proper[ly] shipped at that time.[65] This left open the possibility that the Israelis were free to ship from Israel Israeli-owned TOWs that had been acquired from the United States.[66]

McFarlane testified that the Israelis were informed that the President was unwilling to allow the United States to supply arms directly to Iran.[67] Ledeen testified, however, that, in accordance with McFarlane's instructions, he informed the Israelis that the President approved "in principle" the sale of TOWs by Israel subject to further review of the details.[68]

But Israeli Defense Minister Yitzhak Rabin would not proceed unless he received assurances that the Secretary of State knew of the plan and that the President unequivocally approved. The Israelis were concerned that the initiative could become public; and without specific American approval, Israel would be the target of criticism. In the meantime, the Israelis had received the First Iranian's written proposal, dated July 16, 1985, which was passed on to Ledeen. The proposal was general, promising a more concrete plan in the near future. It contained no commitment for the release of the hostages.[69]

The Israelis insisted on meeting with Ghorbanifar to secure a commitment for the release of the American hostages in return for the shipment of 100 TOWs.[70] The meeting took place in Israel on July 25. Ghorbanifar stressed the need for the 100 TOWs and, for the first time, mentioned spare parts for antiaircraft missiles.[71] He also said that the Iranians needed other weapons as well. Ghorbanifar stated that the weapons would not only strengthen his and the First Iranian's credibility in Iran, but also win the support of the military. The Israelis told Ghorbanifar that they could recommend that their government supply the missiles only if secrecy would be maintained and the hostages released. Ghorbanifar stated that within 2 to 3 weeks of delivery of the missiles, the hostages would be released, although he warned that the Iranians might want to keep a few of the hostages for leverage.[72] On July 28, the Israelis briefed Ledeen on the meeting with Ghorbanifar, and on the Israeli decision not to proceed unless U.S. authorization was more unequivocal. Ledeen reportedly said the Israelis had already received sufficient authorization from the response that the President had given in the hospital. But the Israelis were insistent on confirmation.[73]

The Israeli Arms Sales Are Authorized

On August 2, according to McFarlane's testimony, Kimche flew to Washington to meet with McFarlane and to obtain the specific U.S. position on Israel's sale of the TOWs. The meetings occurred on August 2 and 3. McFarlane made no memorandum of the meetings, and recollections differ. All agree, however, that the Israelis asked for permission to sell 100 TOWs, and that McFarlane agreed to present the issue to the President.[74]

The White House log records an August 6 meeting between McFarlane and the President, the Vice President, Secretaries Shultz and Weinberger, and Regan. McFarlane reported that the Iranians wanted a dialogue with the United States and 100 TOWs from Israel in return for which four hostages would be released.[75] McFarlane also said that the United States would be able to deny any connection to or knowledge of the sale, a suggestion the Secretary of State regarded as untenable.[76] Secretary Shultz told the President that it "was a very bad idea," and that despite the talk of better relations, "we were just falling into the arms-for-hostages business and we shouldn't do it." [77]

Secretary Weinberger also opposed the sale. He and Secretary Shultz argued that the initiative would not work, and that the sale would contradict the U.S. efforts to persuade other countries to observe the embargo.[78] None of the witnesses recalls the Vice President's position, and there is no evidence that Casey was consulted by the NSC staff at this stage. McFarlane, according to Ledeen, directed that Casey and the CIA not be informed for fear that the CIA might leak.[79]

Chief of Staff Regan testified that the President told McFarlane to "go slow" at the August meeting and to "make sure we know who we are dealing with before we get too far into this." [80] According to all the participants, the President announced no decision at the meeting.

Several days later, the President telephoned McFarlane and, according to McFarlane, authorized the Israelis to proceed with the sale in modest quantities of "TOW missiles or other military spares" that would be replenished by the United States. The President stipulated that the sales not affect the balance of the Iran-Iraq war, not be used for terrorist purposes, and not include such major items as aircraft.[81] McFarlane told Poindexter about the conversation, but Poindexter did not recall its contents.[82] Regan recalled that the President appeared upset when he learned in September that TOWs had been shipped.

The President, in his Tower Board interview, originally confirmed that he had authorized the sale, but later stated that he had no actual recollection one way or another.[83] No documents record the decision.

The Tower Board concluded that the President most likely approved the Israeli sales before they occurred. The evidence supports that conclusion. The Israelis expressly sought the President's approval of the Israeli sales and confirmation that the Secretary of State had been consulted. By McFarlane's own admission, he told the Israelis that they were authorized to sell the TOWs.[83a] McFarlane had no motive to approve a sale of missiles to Iran if the President had not authorized it. Moreover, Ledeen testified that McFarlane told him of the President's decision.[84] McFarlane also contemporaneously reported the President's approval to Kimche.[85]

The President's decision on the arms sale conveyed by McFarlane to the Israelis committed the United States to the policy unsuccessfully advocated in the draft NSDD—the sale of weapons by an American ally to Iran.

Preparations for the Delivery

In early August, the Israelis began to make the necessary arrangements to obtain the 100 TOWs through the Israeli Ministry of Defense.[86] Ghorbanifar, in the meantime, was meeting with Khashoggi in Spain to arrange financing for the initial TOW purchase. The Israeli Ministry of Defense was unwilling to supply the TOWs until payment had been deposited. Iran, on the other hand, was unwilling to pay until the missiles were delivered. Ghorbanifar asked Khashoggi to "bridge" this gap by lending him $1 million, which Ghorbanifar could then deposit with the Israelis and repay upon payment by Iran. Khashoggi agreed.[87] On August 7, Khashoggi ordered the transfer of $1 million into an Israeli intermediary's account.[88] Back in Washington, McFarlane asked Ledeen to coordinate with the Israelis on the release of the hostages in Lebanon.[89]

Preparation for the TOW shipment continued in Israel. On August 12, the Israelis decided to deliver the TOWs to Iran by chartering a "neutral," non-Israeli DC-8 aircraft. Still unresolved at this time, however, was the price to be charged by the Israelis to Ghorbanifar for the missiles and the price to be paid by them to the Israeli Ministry of Defense for the TOWs. After considerable bargaining, Ghorbanifar agreed to pay $10,000 per missile, $2,000 less than he was receiving from the Iranian Government.

The Israelis did not agree on the price the Ministry of Defense would receive until after the missiles were delivered to Iran. The Ministry of Defense wanted $12,000 per missile, which it calculated to be the replacement cost per missile. The Israeli intermediaries maintained that they could only pay $6,000 per missile, because the remainder of what they received from Ghorbanifar was required for heavy shipping costs and other substantial expenses.[90] The Ministry of Defense eventually received $3 million from an Israeli intermediary for the 504 TOWs in March 1986.[91]

Israel Ships 96 TOWs—But No Hostage Is Released

On August 19, Ghorbanifar returned to Israel where he met with the Israeli team. Ghorbanifar advised that he had made payments in Iran but he was not certain how many hostages would be released. As for CIA Station Chief Buckley, Ghorbanifar said that the Iranians recognized his "special value" and, therefore, would return him last.[92] That same day, the DC-8 transport aircraft arrived in Israel, and was loaded with 96 (rather than 100) TOW missiles.[93] In the early morning hours of August 20, the plane left Israel bound for Iran, with Ghorbanifar on board. The TOWs were then delivered and the aircraft returned to Israel late that same day.[94]

But no hostages were released. Ghorbanifar had an explanation: contrary to his plan, delivery of the missiles was taken by the Commander of the Iranian Revolutionary Guards rather than by the Iranian faction for whom they were intended.[95] Still, Ghorbanifar remained hopeful that he could produce the hostages. With McFarlane's assent, Ledeen met with Kimche in London on August 20 to discuss ways to bring the hostages out of Lebanon.[96]

From London, Ledeen flew to California, where the President was vacationing, to brief McFarlane on his meeting with Kimche and to obtain McFarlane's authorization for a meeting in Europe with Ghorbanifar and the Israelis.[97] On August 22, McFarlane approved another trip to Europe for Ledeen.[98] On August 30, McFarlane arranged for the State Department to provide NSC staff member Oliver L. North with a passport in the name of William P. Goode for use in "a sensitive operation in Europe in connection with our hostages in Lebanon."[99] On August 27, the Government of Iran transferred $1,217,410 to Ghorbanifar's Swiss account. On August 29, Ghorbanifar repaid Khashoggi the $1 million loaned by Khashoggi on August 7.[100] Khashoggi told the Israelis that, because he had been repaid for the first loan, he would agree to loan $4 million to permit Ghorbanifar to purchase an additional 400 TOWs from the Israelis.[101]

400 More TOWs for 1 Hostage

On September 4 and 5, Ledeen met in Paris with Ghorbanifar and members of the Israeli team. Since no hostages had been released despite the delivery of the 96 TOWs on August 20, severe arguments occurred at the meeting.[102] Ghorbanifar indicated that one hostage would be released provided the Israelis sold Iran an additional 400 TOW missiles. We are satisfied from our review of all the evidence that the President was informed and approved of the transaction in the hope that the hostages would be released. The second shipment was approved by Prime Minister Peres and Defense Minister Rabin on September 9.[103] On September 10, Khashoggi ordered the transfer of $4 million into an Israeli intermediary's account to finance Ghorbanifar's purchase of the 400 TOWs.[104] The money reached the Israeli account on September 13 and Ghorbanifar repaid Khashoggi that $4 million the following day.[105]

The aircraft used to transport the second shipment of TOWs to Iran arrived in Israel on September 14. The DC-8 was loaded with 408 missiles (bringing the total of TOWs shipped to 504), and, early the next morning, it flew to Tabriz to make delivery. On board was Ghorbanifar's Iranian assistant, Mahadi Shahista. Tabriz, rather than Tehran, was used as the Iranian delivery point to prevent this shipment from falling into the hands of the Revolutionary Guards.[106]

The Iranians made it clear that this was an arms-for-one-hostage bargain. They gave McFarlane the choice of any hostage other than Buckley.[107] Ghorbanifar told the Israelis that Buckley was too ill to be released.[108] In fact, Buckley had died in June of a pulmonary condition brought on by prolonged interrogation, torture, and mistreatment.

On September 15, American hostage Reverend Benjamin Weir was released near the U.S. Embassy in Beirut.[109]

On September 17, the Israeli intermediary's account received an additional $290,000 from Ghorbanifar for the expense of transporting the 504 TOWs to Iran,[110] and on September 18, Iran transferred $5 million to Ghorbanifar's Swiss account for the additional TOWs.

Despite the fact that all the TOWs were delivered, only one hostage had been produced, not the group that Ghorbanifar originally had promised. Still, the President continued to receive optimistic reports on the initiative. However, no other hostages were released for the 504 TOWs.

NSC Staff Limits Distribution of Intelligence

At the NSC, North was charged with making the necessary arrangements in the event that any hostages were released as the result of the September 15 TOW delivery. North had been briefed on the initiative earlier.[111]

On September 12, North contacted Director Casey for assistance in obtaining intelligence on Ghorbanifar (who was then using an alias) and the Second Iranian. Casey put North in touch with CIA's National Intelligence Officer for Counter-Terrorism, Charles Allen, who arranged for intelligence support.[112] At McFarlane's instruction, North told Allen to distribute the intelligence only to McFarlane, Vice Admiral A. S. Moreau, Jr. of the Joint Chiefs of Staff, Casey, and North.[113] Secretaries Shultz and Weinberger were not to receive the intelligence. (Weinberger later found out about—and demanded—this intelligence.) Denied access to the intelligence, the State Department was not told of the Israeli TOW shipment, was not advised of the linkage of Weir's release to arms shipments, and was not informed of the President's decision or the U.S. Government's involvement.

Replenishment

McFarlane assured the Israelis that the TOWs shipped to Iran would be replenished at a price to be determined. But, McFarlane emphasized, the linkage between the Israeli sale to Iran and the U.S. sale to Israel could not be obvious.[114]

On September 19, Ledeen sent a message to McFarlane regarding replenishment of Israeli TOW stocks in September: "Issue of replacements: The people who sold the soap for us want to replenish their supply." [115]

The Initiative Continues: The Ante Is Upped

Despite Ghorbanifar's failure to secure the release of the four or five hostages originally promised, discussions of further arms deals continued. In late September, Ghorbanifar met with members of the Israeli team and Ledeen in Paris. This time, Ghorbanifar asked for antiaircraft missiles, including a new HAWK missile to attack high-flying aircraft. (The HAWKs do not have that capability, but apparently none of the participants was aware of this.) Ledeen reportedly consented to a HAWK transaction with Iran, but demanded that the hostages be released.[116] Ledeen recalls that McFarlane approved the sale of HAWKs before November, but Ledeen could not recall when.[117] Nor could he recall this Paris meeting.[118]

In the meantime, North had received information that another U.S. hostage, allegedly Buckley, would be released between October 3 and 5.[119] However, the Islamic Jihad in Lebanon announced, on October 3, that it planned to execute Buckley. North asked Ledeen to arrange for Ghorbanifar to come immediately to the United States to discuss the hostages. On October 8, Ghorbanifar arrived in Washington, accompanied by Schwimmer and Nimrodi, and met with Ledeen at the Old Executive Office Building.[120]

At the meeting, Ledeen reportedly stated that the trading of arms for U.S. hostages was a bad idea that should be stopped. Ghorbanifar agreed.[121] Nonetheless, the Iranian continued to press for a variety of weapons for Iran.[122]

At a subsequent meeting with North and McFarlane, Ledeen maintains that he again expressed his reluctance to be involved with this arms-for-hostages arrangement; preferring to pursue a strategic, not an arms, relationship with Iran.[123] McFarlane, on the other hand, has stated that Ledeen was the person who communicated the most outrageous arms proposals to him, and that he, McFarlane, is the one who was "consistently against arms-for-hostages."[124] Ledeen kept his reports oral,[125] and there is no written record from the fall of 1985 in which Ledeen or McFarlane protest arms sales. Whatever McFarlane's and Ledeen's own views may have been, arms were the currency for the Iran initiative, and McFarlane authorized Ledeen to go to Geneva in late October for a meeting that was to strike the deal for the Israeli HAWK shipment in November.[126]

Meeting in Europe, October 1985

According to Ledeen, the purpose of the late October meeting was not to strike an arms-for-hostages deal with the Iranians, but rather to approach the U.S.-Iranian initiative from the strategic, geopolitical perspective. Ledeen testified that he and the First Iranian discussed ways to improve U.S./Iranian relations without trading arms for hostages. In fact, Ledeen maintained that like himself, this Iranian was "vociferously opposed to what had been done in providing weapons to the Iranian regime over the course of the past couple of months, said that all we could achieve by sending arms to Iran was to strengthen the Khomeini regime, which was the opposite of what he thought we were about."[127] It was Ledeen's belief that "so long as the Iranians are able to obtain weapons from the United States as a result of [a] dialogue with us, they will say anything and they will do anything in order to continue to get these weapons, and so long as that pipeline of weapons functions, we will never be able to evaluate their real intentions."[128]

Ledeen stated that upon his return from Europe, he reported to McFarlane that the First Iranian thought he could have his people occupy "key positions in the [Iranian] government" if the United States would help by providing a quantity of "small arms and training."

By other accounts, however, such political discussions are not all that transpired at the late October meeting. According to one of the Israeli intermediaries, the Iranian official emphasized that efforts must be continued for the release of the four remaining hostages in exchange for arms, particularly HAWK missiles. Also according to the Israeli intermediary, Ledeen was pressing, on behalf of the U.S. President, for all four hostages to be released as soon as possible and all at once, and he promised that following their release the U.S. would assist Iran as far as it could.[129]

This appears to have been the last meeting among Iranian, Israeli, and American representatives before the shipment of HAWK missiles to Iran in late November 1985.

The Lessons of the First Arms Shipment

The August-September 1985 TOW transaction set the pattern for the entire Iran initiative:

—A promise by the Iranians to release the hostages in exchange for an agreed quantity of weapons.

—The breach of that promise after delivery of the weapons.

—The delivery of more weapons in response to new demands by the Iranians.

—The release of a single hostage as an enticement to further arms transfers.

The lesson to Iran was unmistakable: All U.S. positions and principles were negotiable, and breaches by Iran went unpunished. Whatever Iran did, the U.S. could be brought back to the arms bargaining table by the promise of another hostage.

Chapter 9

1. CIA Background Report on Manucher Ghorbanifar, C 1461 at 1462.

2. CIA Report, Army Intelligence and Security Command (INSCOM) Report on Iranian Terrorism, 1/24/84, C 1434-35.

3. CIA cables on William Buckley, C 1502-12.

4. C 1507.

5. CIA cable on Ghorbanifar, 7/25/84, C 1463.

6. Memo to CIA Chief of the Near East Division on the First Iranian, 6/19/84, C 1479.

7. C 1479.

8. C 1461, 1463.

9. C 1463-64.

10. Report on American Hostages in Lebanon, 12/22/84, N 7451-56; Shackley Int., 2/27/87, at 5-7.

11. N 7451-56.

12. Montgomery Int., 3/4/87.

13. Furmark Dep., 7/22/87, at 18-19. In May 1984, Federal criminal charges were filed against Cyrus Hashemi and his brothers, Reza and Jamshid, among others, for alleged arms export control violations. Ultimately, Hashemi arranged with the U.S. Customs Service to run a sting operation that resulted in the April 22, 1986, indictment of 17 individuals in the Southern District of New York on charges that they had engaged in an illegal scheme to smuggle $2.5 billion in U.S. made weapons to Iran. Until his death, apparently of natural causes, in July 1986, Hashemi was to be the primary prosecution witness at the trial of that case. CIA Memo on Cyrus Hashemi, C 9059-61.

14. Furmark Dep., 7/22/87, at 22-23.

15. *Id.* at 36-38.

16. Furmark Dep., 7/22/87, at 52-55. Furmark places Khashoggi's introduction of Ghorbanifar to Schwimmer and Nimrodi in June.

17. Furmark Dep., 7/22/87, at 53.

18. Israeli Historical Chronology. Classified information from the Israeli Chronologies is used in this Report pursuant to specific agreement between the Government of Israel and the Committees. See, Appendix, "Organization and Conduct of the Committees' Investigation."

19. *Id.*

20. Ledeen Dep., 3/11/87, at 9-11.

21. *Id.*

22. *Id.* at 13-15.

23. PROF Note from Donald Fortier to McFarlane on Iran, 5/28/85, N16390.

24. *Id.*; PROF Note from Fortier to McFarlane on Ledeen and Iran, 4/9/85, N 16390-91; PROF Note from McFarlane to Fortier on Ledeen and Iran, 4/9/85, N 15306.

25. Ledeen Dep., 3/11/87, at 14, 16.

26. *Id.* at 16-20.

27. *Id.* at 17-19; Ledeen Dep., 6/19/87, at 40-43.

28. Israeli Historical Chronology.

29. Ledeen Dep., 3/11/87, at 17-19; Ledeen Dep., 6/19/87, at 40-43.

30. N 16394.

31. Graham Fuller Memo, 5/17/85, to Casey: Subj: Iranian Policy, D 570-75.

32. N 16394.

33. N 4113.

34. Ledeen Dep., 6/19/87, at 44.

35. Ex. GPS B.

36. Ex. GPS 5.

37. Ex. GPS 6.

38. Ledeen Dep., 6/19/87, at 45.

39. McFarlane Memo, 6/17/85, to Shultz and Weinberger: Subj: U.S. Policy Toward Iran, N 53467.

40. Ex. CWW 4.

41. Casey Memo, 7/18/85, to McFarlane: Subj: Draft NSDD re U.S. Policy Toward Iran, N 7583.

42. Ex. CWW 4; Weinberger, 7/31/87, at 86.

43. Ex. CWW 5.

44. Ex. GPS 7; Shultz Test., 7/23/87, at 64.

45. President Reagan's Speech to American Bar Association, 7/8/85.

46. Tower at B-6.

47. Israeli Historical Chronology.

48. *Id.* In early June 1985, Khashoggi advised the Israelis that Khashoggi would deal directly with Ghorbanifar and the Israelis, to the exclusion of Hashemi. Israeli Historical Chronology. When, in June, Khashoggi excluded Hashemi, Hashemi reacted by trying to market Ghorbanifar to the CIA, through one of Director Casey's close friends, John Shaheen.

On or about June 16, 1985, Shaheen called Casey and relayed a message from Hashemi offering to set up a meeting in Europe with a high-ranking Iranian official to discuss Iran's interest in acquiring U.S. TOW missiles and Iran's ability to help obtain the release of American hostages held in Lebanon. Before talking to Casey, Shaheen had dismissed part of Hashemi's proposal, telling him, "no weapons, no Da'was." Casey Memo, 6/17/85, to CIA Chief of the Near East Division: Subj: Release of the Hostages, C 8965-66.

Hashemi had tried to deal with Casey before without success. However, this time, Casey agreed to Shaheen's proposition, and directed the Chief of the Near East Division of the CIA's Operations Directorate to pursue the matter. The State Department was told that Casey was "very anxious to move ahead on a proposal" for a meeting with an Iranian representative; but, as outlined in a memorandum to Under Secretary of State Michael Armacost, the proposal made no mention of any arms sales. By June 24, Armacost had approved a plan by which a meeting would be set up between foreign intermediaries and the Iranian contact to be produced by Hashemi. Richard Murphy Memo, 6/22/85, to Armacost: Subj: Possible Iranian Contact, S 3812-13.

In early July, Hashemi identified his Iranian contacts as the Second Iranian, described by Hashemi as Deputy Prime Minister of Iran, and Manucher Ghorbanifar, described by Hashemi as a ranking Iranian intelligence officer. CIA Memo for the Record, 7/9/85, Subj: John Shaheen and Hashemi, C 9082-84. The CIA recognized the Second Iranian as a significant Iranian official and Ghorbanifar as a "fabricator" with whom it did not wish to do business. The Agency suspected a scam but was nonetheless prepared to pursue a meeting between foreign intermediaries and the Second Iranian. Efforts in that regard continued through July and August. CIA Cable on Possible Contacts with Iranian Government Reps., 7/85, C 1475-77; CIA Memo for the Record on Hashemi, 7/23/85, C 9072; CIA Cable, 7/85, C 9073; CIA Cable re the Second Iranian Meeting, C 9074; CIA Memo for the Record on Hashemi, 7/15/85, C 9075-

76; CIA Memo for the Record on Hashemi, 7/15/85, C 9077-78; CIA Memo for the Record on Hashemi, 7/23/85, C 9079; S 3812-16. However, no meeting with the Second Iranian occurred at that time. C 9059-60; George Test., *Hearings,* 100-11, at 191-192; Former Chief/NE (CIA) Dep., 4/28/87, at 26-53.

49. Israeli Historical Chronology.

50. *Id.*

51. McFarlane Test., *Hearings,* 100-2, at 43.

52. *Id.* at 43-44.

53. Powell Dep., 7/19/87, at 5-7.

54. Israeli Historical Chronology.

55. *Id.*

56. *Id.*

57. Ledeen Dep., 6/19/87, at 51. Approximately 2 months prior to the meeting with Schwimmer, Shackley told Ledeen about a meeting Shackley had had with an "Iranian in Europe" who offered to "arrange the Ransom of Buckley and possibly other American hostages." Shackley also gave Ledeen a memorandum describing the proposal, N 7452-56. Although Shackley was describing his meeting with Ghorbanifar in November 1984, see pp. 6-8, and the memorandum mentions Ghorbanifar by name, Ledeen testified that he passed the memorandum on to North without reading it and that he had never heard of Ghorbanifar before meeting with Schwimmer on July 11. Ledeen Dep., 3/11/87, at 28-30.

58. Note to McFarlane from Wilma Hall, his secretary, on Schwimmer and Ledeen, 7/11/85, N 10579.

59. Ledeen also gave McFarlane a document written by Khashoggi that advocated an overture toward Iran.

60. Ex. GPS 9.

61. *Id.*

62. Ex. GPS 10.

63. McFarlane Test., *Hearings,* 100-2 at 45-47. Regan Test., *Hearings,* 100-10, at 6.

63a. Regan Test., *Hearings,* 100-10, at 6.

64. Ex. 59.

65. McFarlane Test., *Hearings,* 100-2, at 46.

66. *Id.*

67. *Id.*

68. Ledeen Dep., 9/10/87, at 27-28.

69. Israeli Historical Chronology.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. McFarlane Test., *Hearings,* 100-2, at 48-49; Israeli Historical Chronology.

75. Shultz Test., *Hearings,* 100-9, at 27.

76. *Id.*

77. *Id.*

78. Weinberger Test., *Hearings,* 100-10, at 131-32.

79. Ledeen Dep., 6/19/87 at 74.

80. Regan Test., *Hearings,* 100-10, at 12.

81. McFarlane Test., 5/11/87, at 114-21.

82. Poindexter Test., 7/15/87, at 38.

83. Tower at B-19, 20.

83a. McFarlane Test., *Hearings,* 100-2, at 49.

84. Ledeen Dep., 6/19/87, at 58-61.

85. McFarlane Test., *Hearings,* 100-2, at 50.

86. Israeli Historical Chronology.

87. Furmark Dep., 7/22/87, at 73-76.

88. Israeli Financial Chronology.

89. Ledeen Dep., 6/19/87, at 66; Ledeen Dep., 6/19/87, at 61-65.

90. Israeli Historical Chronology.

91. *Id.*

92. Buckley died in June 1985 after long interrogation and torture. But the U.S. Government believed that he was still alive as late as the fall of 1985, and was seeking his release.

93. The TOWs were packed in pallets of 12 missiles each, and no unpacked missiles were shipped for safety reasons. Israeli Historical Chronology.

94. *Id.* The Tower Board Report states that the first shipment by the Israelis of 100 TOWs occurred August 30, 1985. See Tower at B-26. The Board's source for that date is not apparent from the text of the Report. The August 20 date from the Israeli Chronology appears accurate given the context of related events.

95. *Id.* at 27.

96. Ledeen Dep., 3/11/87, at 52; Ledeen Dep., 6/19/87, at 66-68.

97. Ledeen Dep., 3/11/87, at 52-53.

98. PROF Note by McFarlane on Ledeen, 8/22/85, N 17790.

99. Tower at B-25; see also North Memo to McFarlane: Subj: Fake Passport for North, N 6412-13. Ledeen has testified that to his knowledge, this was North's first involvement in and knowledge of the Iran initiative. See Ledeen, Tower Int. (1) at 46 and (2) at 74; Ledeen Dep., 6/19/87, at 72.

100. Israeli Historical Chronology. Only the $1 million repayment figure is derived from the Israeli Chronology.

101. *Id.*

102. *Id.*

103. *Id.*

104. Israeli Historical Chronology; Israeli Financial Chronology.

105. Israeli Financial Chronology.

106. Israeli Historical Chronology.

107. McFarlane Test., 5/11/87, at 122-23.

108. Israeli Historical Chronology.

109. *Id.*

110. Israeli Financial Chronology. The Tower Report's analysis of this transaction differs from that provided by the Israelis. According to Tower, Ghorbanifar initiated the transaction with a $4 million check to Khashoggi. Khashoggi transferred $4 million to the Israeli account on September 14. The Iranians transferred $5 million to Ghorbanifar's Swiss account on September 18. Ghorbanifar then notified Khashoggi to negotiate the $4 million check. Ghorbanifar paid later an additional $250,000 to the Israeli account for "additional eight TOW missiles." Tower at B-176-77.

111. North Test., *Hearings,* 100-7, Part II, at 25, 48.

112. Charles Allen, National Intelligence Officer, Memo Subj: Initiative to Secure Release of American Hostages, 10/7/85, I 0644; Allen Dep., 4/21/87, at 49-58.

113. Charles Allen, Tower Int. at 6. Within the CIA, Allen testified that the intelligence reports were provided to DDO Clair George. Allen Dep., 4/21/87, at 77-79. George denies receiving the material generated prior to the Finding. George Test., 8/5/87, at 277.

114. McFarlane Test., *Hearings,* 100-2, at 49.

115. N 16502; Ledeen Dep., 3/11/87, at 59-60; Ledeen Dep., 6/19/87, at 68-80.

116. Israeli Historical Chronology.

117. Ledeen Dep., 9/10/87, at 17.

118. *Id.* at 16-17.

119. I 0645.

120. Ledeen Dep., 6/19/87, at 81. Ledeen disputes the representation in Charles Allen's memorandum, I 0644-46, linking the October 8 meeting to the threat on Buckley's life by the Islamic Jihad. Ledeen says there was no expectation of hostage releases in early October. *See* Ledeen Dep., 6/22/87, at 132-39.

121. Ledeen Dep., 6/19/87, at 83-84; Ledeen Dep., 6/22/87, at 181-83.

122. *Id.* at 81.

123. Ledeen Dep., 3/11/87, at 71-78; Ledeen Dep., 6/19/87, at 81-88.

124. McFarlane letter published in Wall Street Journal, 8/14/87.

125. Ledeen Dep., 9/10/87, at 15.

126. Ledeen Dep., 3/11/87, at 78-82.

127. Ledeen Dep., 3/11/87, at 81-82.

128. *Id.* at 83, 78.

129. Israeli Historical Chronology.

Chapter 10

Arms to Iran: A Shipment of HAWKs Ends in Failure

An Israeli-American plan to sell HAWK missiles to Iran in exchange for American hostages crystallized in November 1985. The plan—which grew out of the late October meeting in Geneva among Michael Ledeen and Iranian and Israeli officials and intermediaries—ultimately led to a shipment of 18 HAWK antiaircraft missiles by a CIA airplane from Israel to Tehran on November 24 and 25. As the plan evolved, National Security Adviser Robert McFarlane had contacts with senior Israeli officials, brought aspects of the plan to the attention of the President, Chief of Staff Donald Regan, and the Secretary of State, and gave Oliver North increasing responsibility for overseeing the plan's implementation. The planning and execution of the operation did not proceed smoothly, and in the end, no hostages were released.

Ledeen Brings Home a Plan

NSC consultant Michael Ledeen returned to Washington from the Geneva meeting at the end of October 1985. He told North and McFarlane of the National Security Council Staff of the proposal by Manucher Ghorbanifar and the other Iranians that the United States provide specified missiles in return for the release of U.S. hostages in Lebanon. On October 30, 1985, Ledeen first met alone with North and then with both North and McFarlane.[1] In the first meeting, Ledeen said that the "First Iranian," a highly placed Iranian official who acted as a go-between in the arms sales negotiations, "wants to be U.S. ally—has support in Tehran." Ledeen spelled out the Iranians' demands for securing the American hostages' freedom. He told North that, "to get hostages out," the Iranians wanted a "blanket order" of 150 HAWK missiles, 200 Sidewinder missiles, and 30 to 50 Phoenix missiles. The proposal contemplated that the hostages would be released in three groups, with separate arms deliveries to Iran to occur before the second and third releases. Ledeen raised the unresolved problem of U.S. replenishment of the 500 TOWs withdrawn from Israeli reserves and shipped to Iran in August and September 1985 prior to the release of hostage Benjamin Weir. Ledeen said Israeli Defense Minister Yitzhak Rabin was "complaining about" the United States' failure to make good on its promise to replace those items.[2]

North and Ledeen met with McFarlane later that day to continue the discussion. Ledeen, claiming that improved U.S.-Iranian relations could follow an agreement, advocated cooperation with the Israelis "to bring out credible military and political leaders" in Iran. McFarlane expressed skepticism even about the existence of moderate elements in Iran, let alone their ability to come to power. Nevertheless, he did not oppose renewing arms shipments to Iran. McFarlane instructed North and Ledeen that "not one single item" of armaments should be shipped to Iran without the release of "live Americans."[3] McFarlane, Deputy National Security Adviser John Poindexter, and other senior American officials often repeated this instruction over the next several months, but it was consistently disregarded.

Ledeen's meeting with the First Iranian in Geneva led to meetings between the Americans and Israelis in early November 1985. The Iranians had significantly increased their demands for weapons. Moreover, the Israelis still sought replenishment of the TOWs they had sold to Iran.

On November 8, David Kimche, the Director General of the Israeli Foreign Ministry, met in Washington with McFarlane, North, and Ledeen.[4] This was one of a series of meetings that McFarlane had with Kimche in the fall of 1985.[5] Ledeen arranged this session in the hope of keeping the Iran initiative moving:

> I asked Kimche to talk to McFarlane because I was convinced that McFarlane was getting ready to resign, and was in a bad psychological state and was planning to abandon the entire Iranian initiative. I urged to Kimche to talk to McFarlane to ask him, first, not to resign; and second, not to abandon the political initiative with regard to Iran.[6]

North-Nir Dialogue Begins

North and Amiram Nir, the Israeli Prime Minister's Adviser on Combatting Terrorism, met in Washington on November 14.[7] Although they apparently did not discuss arms sales to Iran, they did set the foundation for a variety of future Israeli-U.S. covert operations. North jotted notes indicating that this operation could require at least a million dollars a month "for near term and probably mid-term rqmts [requirements]." North's notes list several unanswered questions:

- How to pay for
- How to raise $ . . .
- Use Israelis as conduit?
- Go direct?
- Have Israelis do all work w/U.S. pay?
- Set up joint/Israeli cover op [8]

On November 19, North and Nir discussed two code-named covert operations, "T.H. 1," the one they had discussed on November 14, and "T.H. 2." North's notes reflect that the second operation would also require a source of "op[erational] funds."[9] In mid-November, North did not have answers to the funding question. But, according to North, within a few months, he and Nir had solved the problem: they would use the Iran arms sales profits.[10] Planning for the privately funded joint covert activities began.

McFarlane Briefs CIA

On November 14, after a regular weekly meeting attended by Director of Central Intelligence William Casey, his deputy, John N. McMahon, and Poindexter, McFarlane told Casey of "the Israeli plan to move arms to certain elements of the Iranian military who are prepared to overthrow the government."[11] McMahon said McFarlane provided this information casually as the meeting was breaking up. Casey related this information to McMahon on the drive back to Langley.[12] McMahon recalled that this information left him with the impression that the NSC staff was merely monitoring an ongoing Israeli effort.[13]

McFarlane Gives Rabin the Go-Ahead

The following day, Israeli Defense Minister Rabin met with McFarlane at the White House and told him that Israel was about to make another arms shipment to Iran and would need replenishment from the United States.[14] Rabin wanted "to reconfirm that the President of the United States still endorsed this concept of Israel negotiating these arms sales." McFarlane replied that the President's authorization for Israel to sell arms to Iran subject to replenishment by the United States was still in effect, and that this was "based upon recent questions and reaffirmation by the President that I had received."[15] Rabin also sought reassurance that the matter was indeed a joint project between the United States and Israel. McFarlane replied that while the United States supported Israel's activities, it was going along with Israel on this matter.[16]

Rabin raised the still unresolved question of the U.S. commitment to replenish the 504 TOW missiles sent to Iran in August and September. McFarlane replied that he was aware of the difficulties and that within two weeks he would be sending North to Israel to find a technical means of achieving the replacement.[17]

McFarlane Briefs the President

McFarlane told the President about the developing plans for the HAWK transaction shortly before they left on November 17 for a summit meeting with Soviet leaders in Geneva. Regan, who was present, said it was:

> [J]ust a momentary conversation, which was not a detailed briefing to the President, that there [is] something up between Israel and Iran. [McFarlane said] [i]t might lead to our getting some of our hostages out, and we were hopeful. . . .[18]

McFarlane did not stress that what he and Rabin saw as Ghorbanifar's unreliability was adding to the risks of the operation. Instead, McFarlane merely made "a passing reference here or there" about these concerns, and did not discuss them at length with the President at the time.[19] The President's reaction was "cross your fingers or hope for the best, and keep me informed."[20]

The November HAWK Shipment

By the third week of November, the Israeli intermediaries and the Americans believed they had reached an agreement with Ghorbanifar on a plan that would gain release of all the hostages by Thanksgiving. The plan was, in essence, a straight swap: U.S.-made missiles in Israeli stocks would be sold to Iran in exchange for American hostages. As the exchange date approached, many details remained unresolved. They were only hammered out in separate and frantic long-distance negotiations among the Israeli intermediaries and Ghorbanifar, Ghorbanifar and his contacts in the Iranian Government, and Israeli Government officials and NSC officials.

How Many Missiles?

One critical component of the plan was unsettled until the eleventh hour—the number and type of missiles that the Israelis would ship to Iran. As evidenced by their late October proposal, the Iranians wanted to purchase immediately hundreds of millions of dollars worth of sophisticated U.S.-made missile systems for use in their war with Iraq. The Israelis were concerned about depleting their stocks. The Americans, who had not found a solution to the replenishment requirements arising out of the August and September missile shipments, sought an agreement involving smaller quantities of missiles shipped over time. The middlemen in the transaction—Ghorbanifar and Al Schwimmer and Yaacov Nimrodi, Israeli arms dealers also involved in the negotiations—had substantial monetary incentives to negotiate a deal in which large quantities of weapons and money would change hands.

By Sunday, November 17, the planners had decided on an initial shipment of 80 HAWK missiles.[21] This shipment was to be just the start of a much larger, phased transaction.

On November 18, North called Schwimmer, who was in direct contact with Ghorbanifar. They discussed a sale of 600 HAWKs to Iran in groups of 100 spread out over the next 3 or 4 days. Schwimmer told North that the first shipment of 100 missiles had been "approved" in Tel Aviv and that it was to be followed by the release of five "boxes," the code name for the American hostages.[22] After the call, North wrote in his Notebook: "Schwimmer to P/U [pick up] HAWKs in U.S."[23] That day, an Israeli official told Prime Minister Shimon Peres that the Americans were willing for 500 HAWK missiles to be supplied, but it was proposed that Israel supply 80 HAWKs.[24]

There is other evidence of plans for a very large weapons shipment to Iran: In mid-November a European broker sought an air carrier to transport immediately 10 planeloads of armaments in long crates from the capital of Country 15 to Tehran.[25] An airline owned by the CIA became aware of the shipment.[26] This CIA airline proprietary learned that "[t]he cargo is declared to be medicine but is in reality ammunition etc." [27] When this same proprietary was called in about 10 days later by CIA officials to move HAWK missiles, the company's manager concluded that the cargo was the same as what the European broker had offered earlier.[28]

By November 20, the plan—as reported by North to Poindexter—had moved away from one involving 500 to 600 HAWKs toward one that included these components: First, 80 HAWKs from Israeli stocks were to be moved to Iran on Friday, November 22, on three planes spaced apart by 2 hour intervals. After the planes were launched, but before they landed in Iran, five American and possibly one French hostage would be released. After the hostages were freed, 40 more HAWKs would be moved to Iran. The United States would replenish Israel's stocks promptly by sale at a mutually agreed price.[29]

North's notes from the same day confirm that the initial delivery was to be 80 items, but indicate a key difference from what he had reported to Poindexter: the American hostages would not to be freed all at once in advance of the arrival of any HAWKs, but rather would be released sequentially after each shipment. After referring to the total of 80 HAWKs, North wrote:

—One 27-2
27-3
26-1
6+1 French [30]

This notation appears to mean that 2 hostages were to be released after a first shipment of 27 missiles, 3 hostages were to be released after a second shipment of the same amount, and 1 hostage would be released after a third shipment of the remaining 26 items. In fact, within a few days, an initial load of HAWKs arrived in Tehran without any prior hostage release.

McFarlane's instruction not to ship weapons without the prior release of the hostages thus was not followed. From this point on, the Iranians would always insist on sequential delivery of weapons, followed by the release of hostages. On November 20, North wrote in his notebook: "120 HAWKs=1) 5 Amcits, 2) Guarantee that no more." [31]

North's notes also suggest that although the initial shipment quantity had been reduced from 600 HAWKs, additional arms shipments to Iran were contemplated after the shipment of 120 HAWKs. Following a description of the sequence of delivery for the first 80 HAWKs and the hostage releases, North wrote: "After—40 more HAWKs, 200 SW [Sidewinder] missiles, 1900 TOWs." [32]

McFarlane Puts North in Charge

While McFarlane was at the Geneva summit with the President, North became immersed in the details of the HAWK transaction. North testified that he was "thrown into this on the night of November 17," in almost simultaneous telephone calls from Rabin and McFarlane.[33] Rabin told North that the plan called for Israel to move 80 HAWK missiles by November 20. He said that Israel was unwilling to commence the shipment without satisfactory arrangements for replenishment by the United States.[34] According to North's notes, McFarlane told North to solve Rabin's replenishment problem, and "to keep orders under $14M" each—the threshold figure for reporting foreign military sales to Congress.[35] After the calls from McFarlane and Rabin, North "flew up immediately [to New York] to talk with Mr. Rabin." In New York, he met with officials of the Israeli Ministry of Defense Procurement Mission, who wanted to arrange replenishment sales to Israel of 508 TOWs and 120 HAWK missiles.[36]

The next day, North or Poindexter asked Lt. Gen. Colin Powell, then military assistant to Secretary of Defense Casper Weinberger, about the availability and price of HAWKs and TOWs, and the legality and method of transferring such missiles. The requester initially sought information on a proposed transfer of 500 HAWKs, but, in accordance with the evolving plan, soon cut the number to 120. Powell understood that the ultimate destination of the weapons would be Iran and that Israel was acting as an intermediary.[37]

After receiving this request, Powell contacted Noel Koch, Principal Deputy Assistant Secretary of Defense for International Security Affairs, who in turn asked Henry Gaffney, Director of Plans, Defense Security Assistance Agency (DSAA), to find out how many HAWKs were available for immediate transfer. DSAA is the entity within the Department of Defense that is primarily responsible for arms sales to other governments. Koch asked Gaffney to prepare a Point Paper examining the requirements for notification of Congress and whether the ultimate destination of the weapons might be concealed.[38]

Gaffney testified that he understood from his superiors that the Point Paper should cast a negative view of the transaction to reflect Secretary Weinberger's presumed opposition to arms transfers to Iran.[39] He completed his paper, entitled "HAWK Missiles for Iran," on November 22 or 23 and submitted it to Powell. Powell testified that he gave the paper to Secretary Weinberger,[40] who did not, however, recall receiving it.[41]

Gaffney's Point Paper included important information about the price and availability of HAWKs: 164 missiles were available for foreign sale at that time; the missiles cost the United States approximately $300,000 per unit; and replacement cost would be as much as $437,700 per unit. Transportation and administration charges would have to be added. Seventy-nine of the missiles were available for immediate shipment. This state of the inventory may be one reason why the number of HAWKs planned for immediate shipment from Israel to Iran—and therefore the number which the United States would have to quickly replenish—was set at 80. Gaffney's Point Paper also described political drawbacks of a weapons transfer to Iran.[42]

Gaffney testified that under the Arms Export Control Act, Iran was not an eligible country for direct sales from the United States, and that, in his view, even if Iran were to become eligible, the contemplated sales of HAWKs could not be made directly or indirectly (through Israel or otherwise) unless the President notified Congress. In addition, Gaffney testified that if the transfer were to be made by Israel, U.S.-Israeli agreements require advance, written U.S. consent. U.S. law mandates that the President cannot give that consent without certain conditions being met in advance, including obtaining assurance from Iran that it would use the weapons only for self-defense and would comply with U.S. restrictions on retransfer to another country. These were conditions that Iran could not or would not meet.[43]

McFarlane Informs the President and the Secretary of State

While they were still in Geneva, McFarlane updated the President and Chief of Staff Donald Regan on the status of the HAWK shipment and the anticipated hostage release.[44] McFarlane informed them that the Israelis were about to ship the weapons, and expressed hope[45] that the hostages would come out by the end of the week.[46] McFarlane specifically told the President that Israel was about to deliver 80 HAWK missiles to Iran via a warehouse in Country 15, and that Israel wanted the United States to replace those missiles.[47]

McFarlane testified that he simply told the President that the Israelis were about to act, but did not ask for specific approval:

> [T]he President provided the authority in early August for Israel to undertake, to sell arms to Iran, and to then come to the United States for replenishment, to buy new ones. That didn't require then the Israelis to come back to us on each occasion and get new approval.[48]

The President asked McFarlane to arrange a meeting at which the President and his top advisers would review the initiative after the summit.[49]

At about the same time, McFarlane also told Secretary of State George Shuitz of the impending arms-for-hostages swap.[50] McFarlane called Secretary Shultz by secure phone "out of the blue, about a hostages release and arms sales to Iran." [51] McFarlane explained that Israel was about to ship 100 HAWKs to Iran through Country 15, that the shipment would occur only if the hostages were released, and that the United States would sell replacements to Israel.[52] Secretary Shultz understood it as "a straight-out arms-for-hostages deal." He expressed his opposition, and rebuked McFarlane for not informing him about it earlier: "I told him I hoped that the hostages would get out, but I was against it, and I was upset that he was telling me about it as it was just about to start so there was no way I could do anything about it." [53] When asked about Secretary Shultz' account, McFarlane testified: "I don't recall it that way." [54]

Even as McFarlane was filling in Shultz on the broad outline of the plan, his NSC subordinates took steps to keep the Department of State hierarchy in the dark about the complex diplomatic problems caused by the operation. For instance, Secretary Shultz was not told of the back-channel communications and actions of State Department officials, taken at the behest of CIA and NSC officials, to support the HAWK shipment.[55]

North Recruits Secord

As McFarlane had explained to the President and Secretary Shultz, the plan was to move 80 HAWKs from Tel Aviv to the capital of Country 15, transfer them to other planes, and then ship them on to Iran. The planners chose this circuitous routing because direct flights from Israel to Iran would draw attention given the poor relations between Israel and Iran.[56] Because the cargo was arms, special clearances had to be obtained from the government of Country 15. As the pilot who ultimately flew the HAWKs to Iran stated:

> Everybody can fly [in Europe] without clearances unless you have . . . sensitive stuff like arms aboard, and then you have to have diplomatic clearance.[57]

A problem developed on November 18: The government of Country 15 was unwilling to grant the special clearances. On that day, North asked Richard Secord—his confederate in the covert operation supporting the Contras—to fly to Country 15 to "see what he could do to straighten out the mess."[58] Secord said this was when he learned of the Iran arms initiative.[59] North explained the secret operation to Secord, indicating that it had been sanctioned by the United States, that it had run into difficulties in Country 15, and that there was "quite a bit of urgency" to get Secord to go there. According to Secord, North "knew that we had—my organization had had extensive deals with the armament [industry]" in Europe and "wondered if I could arrange for this transshipment."[60]

The next day, North gave Secord a letter on White House stationery, signed by North "for" McFarlane, stating

> Your discrete [sic] assistance is again required in support of our national interests. At the earliest opportunity, please proceed to [the capital of Country 15] and other locations as necessary in order to arrange for the transfer of sensitive materiel being shipped from Israel.
>
> As in the past, you should exercise great caution that this activity does not become public knowledge. You should ensure that only those whose discretion is guaranteed are involved.[61]

McFarlane testified he was not aware that North was providing this letter to Secord, and that his permission was not sought to send it out.[62]

Secord arrived in Country 15 on November 20.[63] He and his associate Thomas Clines, who Secord said "had really been handling all of the matters for the Enterprise" in Europe, together started "to work the problem . . . through our colleagues in the armament industry . . ."[64]

Million-Dollar Deposit to Lake Resources

On November 18—the same day that he brought Secord into the deal—North began to arrange for a $1-million transfer from Israeli intermediaries to the account of Lake Resources,[65] a Panamanian company controlled by Secord and referred to by North as "our Swiss Co[mpany]."[66] Lake Resources and its account at Credit Suisse in Geneva had been established by North and Secord in May 1985 "to receive monies in support of the covert operations."[67] Prior to this deposit, which was made on November 20,[68] Secord and North had used the company exclusively for supporting the Contras.

The purpose for this $1-million deposit is unclear. North and Secord testified that the payment was for chartering planes to move the 80 HAWKS to Iran.[69] The Israeli Historical Chronology affirms this explanation.[70] North and Secord, however, were unable to explain why they were asking for transportation expenses on November 18 when, according to Secord, his original assignment was only to help obtain landing clearances for planes already chartered by Schwimmer.[71] It was not until November 22, when Schwimmer's charter unexpectedly fell through, that Secord's role was expanded.[72] At that time, the amount Secord expected to pay for chartering planes was less than $1 million.[73]

Some evidence suggests that Secord made, or contemplated making, expenditures in Country 15. One of the persons with whom Secord was working, an officer of a European arms company, reportedly attempted to bribe an official of the government of Country 15 to obtain the necessary clearances,[74] and there are references to Secord having spent substantial sums in Country 15.[75] However, bank records do not show any such payments out of the Lake Resources account.

Whatever the initial purpose of the deposit, the Committees have ascertained its use. Secord used approximately $150,000 to pay for air charters relating to the HAWK shipment, and the remaining $850,000 was spent to support the Contras and to make profit distributions to Secord and his business associates, Albert Hakim and Thomas Clines.[76] North testified that in early 1986 he told the Israelis that the money had been used "for the purpose of the Contras" and that they acquiesced.[77] The first "diversion" to the Contras of money received in connection with the Iranian arms sales had occurred.

Confusion in Country 15

The plan to ship the HAWKs through Country 15 faced collapse because the government there refused to grant the necessary clearances. Upon arriving in Country 15, Secord and his associates—the European businessman and Clines—tried to overcome this problem.[78] All three were fully aware that the cargo to be moved was HAWK missiles.[79] Because their efforts were outside normal diplomatic channels and in contradiction to stated U.S. policy, they were not well-received by the government of Country 15.[80]

The European businessman may have tried to solve the problem even before Secord arrived. The Deputy Chief of Mission of the U.S. Embassy in Country 15 recalled learning on November 23 that about one week earlier the European businessman had approached an official of Country 15 and offered what the official considered to be a bribe to assist in the transit of a shipment involving the United States, Israel, and Iran.[81] If this approach occurred around November 16, as the evidence suggests, then it draws into question Secord's testimony that he was not brought in until November 18.

On November 20, the European businessman called an official of Country 15's Foreign Ministry and expressed the hope that the Foreign Ministry would grant permission for two aircraft carrying weapons from Israel for Iran to transit the country. To the official, the businessman appeared to be "acting as a broker for the arms deal." The European businessman referred to an "American general," presumably Secord, involved in the undertaking. The foreign government was disturbed by the businessman's approach, and the next day another official asked the American Embassy for "information about this strange case." The Embassy, unaware that the U.S. Government supported this shipment of weapons to Iran, told the Foreign Ministry that the shipment was not authorized by the United States and was contrary to U.S. Government policy strongly opposing arms sales to Iran.[82]

Contributing to the confusion of the government of Country 15 was another incident on November 21. "Anonymous people claiming to 'represent the American administration' " attempted to intercept the country's Foreign Minister and Prime Minister at the airport of the capital of Country 15 following their return from the European Economic Summit in Brussels.[83] A CIA cable reporting this incident stated that this approach, while unsuccessful, was "particularly upsetting" to the foreign government because it "aroused both attention and suspicion."[84]

North Updates Poindexter

As the operation faltered on November 20, North reported to Poindexter and portrayed a mission well under control. He made no mention of the obstacles faced in Country 15:

> The Israelis will deliver 80 Mod HAWKS to [the capital of Country 15] at noon on Friday 22 Nov. These 80 will be loaded aboard three chartered aircraft, owned by a proprietary which will take off at two hour intervals for Tabriz, [Iran]. The aircraft will file for overflight through the [capital of Country 16] FIR enroute to Tabriz [from Country 15]. Appropriate arrangements have been made with the proper . . . [Country 16] air control personnel. Once the aircraft have been launched, their departure will be confirmed by Ashghari [a pseudonym for Ghorbanifar] who will call [the Second Iranian official] who will call [an Iranian in Damascus] who will direct [another Iranian in Beirut] to collect the five rpt five Amcits [American citizen hostages] from Hizballah and deliver them to the U.S. Embassy. There is also the possibility that they will hand over the French hostage who is very ill.
>
> There is a requirement for 40 additional weaps of the same nomenclature for a total requirement of 120. $18M in payment for the first 80 has been deposited in the appropriate account. No acft will land in Tabriz until the AMCITS have been delivered to the embassy. The Iranians have also asked to order additional items in the future and have been told that they will be considered after this activity has succeeded. All transfer arrangements have been made by Dick Secord, who deserves a medal for his extraordinary short notice efforts.
>
> Replenishment arrangements are being made through the MOD [Israeli Ministry of Defense] purchasing office in NYC. There is, to say the least, considerable anxiety that we will somehow delay on their plan to purchase 120 of these weapons in the next few days. IAW [in accordance with] your instructions I have told their agent that we will sell them 120 items at a price that they can meet. I have further told them that we will make no effort to move on their purchase LOA [Letter of Offer and Acceptance] request until we have all five AMCITS safely delivered. In short, the pressure is on them.[85]

This PROF message is clear evidence that North informed Poindexter in detail of the HAWK transaction—including the involvement of Secord and the replenishment arrangements—well in advance of the shipment.

North Asks the CIA for Assistance

Secord and the European businessman were unable to budge the government of Country 15. With only hours left before an Israeli plane carrying 80 HAWKs was to depart for the capital of Country 15, North urgently sought assistance from McFarlane, the CIA, and the State Department. North called McFarlane on the evening of November 21; they discussed whether McFarlane should call Country 15's Prime Minister or Foreign Minister in the morning.[85a]

Informed by Secord of the difficulties in Country 15, North immediately asked CIA official Duane Clarridge to assist in obtaining clearances for the plane going there.[86] Clarridge said Secord should contact the CIA Chief in Country 15, whose name North then relayed to Secord.[87] At the same time, Clarridge sent "flash" cables instructing the CIA

Chief in Country 15 and his deputy to report immediately to the office for a "special assignment."[88]

The next morning, November 22, Secord, using his Copp pseudonym, called the CIA Chief and said that he urgently needed clearance for an El Al charter flight scheduled to leave Tel Aviv in 20 minutes and fly to the capital of Country 15. Secord urged the CIA Chief to call an official of Country 15 and emphasize the urgency of obtaining the clearance. At this point, the CIA Chief suggested enlisting the help of the Deputy Chief of Mission at the U.S. Embassy in Country 15.[89]

North Brings State Into the Operation

At about this time, North pressed to involve the U.S. Embassy directly in the efforts to obtain the clearances. North accurately told Robert B. Oakley, then Director of the Office of Counterterrorism and Emergency Planning at the Department of State, that Israel had encountered problems obtaining clearances in Country 15 for a transshipment of HAWK missiles for Iran. In contrast, North falsely told Oakley that he had learned of the shipment when "'one of his people' went to an arms warehouse [in Country 15] to obtain arms for the Nicaraguan Resistance, and learned that the Israelis had been obtaining arms from the same source for shipment to Iran." In any event, Oakley gave North permission to tell the Embassy in Country 15 that the State Department was "aware" of the unfolding operation and that the Embassy "could request clearances." [90] Thereafter, the CIA Chief was instructed to insure that if the Deputy Chief of Mission felt compelled to communicate with the State Department, he should use only the CIA channel.[91]

The NSC also involved Oakley and the State Department in another capacity. On November 21, Oakley notified the CIA's counterrorism component that "information from the NSC indicated that one or more U.S. hostages would soon be released in Lebanon." Oakley reported that a team was departing for Wiesbaden, West Germany, to await the arrival of the hostages. The team arrived in Wiesbaden the following day, and remained there until November 27.[92]

On November 22, Oakley reported to Secretary Shultz (who had returned from Geneva) and others at the State Department "that the hostages would be released that afternoon in exchange for 120 HAWKs at $250,000 each—worth $30 million in all." Secretary Shultz and his advisers, Deputy Secretary John C. Whitehead and Undersecretary Michael Armacost, shared their apprehension about the endeavor. The Secretary, who "regarded it as a $30 million weapons payoff," told his deputies: "Bud [McFarlane] says he's cleared with the President."[93]

The next day, Secretary Shultz was told that no hostage had been released and that the deal had collapsed.[94] That was false. The operation was still being actively pursued, and the movement of 18 HAWKs was yet to occur.

Jumbo Jet Departs for Country 15 Transit Point

Although the clearance for landing in Country 15 had not been authorized on the morning of November 22, the El Al 747 carrying the 80 HAWK missiles was ordered to take off for that country's capital. As the plane neared its "go—no go point," frantic efforts were underway to change the country's government's position. Clarridge cabled the CIA Chief in Country 15 and ordered him to "pull out all the stops" to solve the problem.[95] Secord called an official in Country 15's foreign ministry, who said that the government had decided to withhold permission based upon the U.S. Embassy's previous statement that the United States did not concur in the shipment.[96] Hoping to reverse this position, the Deputy Chief of Mission made hurried phone calls attempting to summon the Country 15 Foreign Minister out of a cabinet meeting; and Secord told the CIA Chief that "McFarlane was being pulled out of [a] meeting with [the] Pope" to call the Foreign Minister.[97]

All these efforts were in vain. By early afternoon, Secord, who was in radio contact with the El Al plane,[98] telephoned North and informed him that the government of Country 15 had refused permission. He said the aircraft had been ordered back to Tel Aviv.[99]

North and Clarridge Bring in a CIA Airline

Due to the delays, the El Al plane, which the Israelis had reserved for this operation for only a limited time, was no longer available.[100] Clarridge, North, and Secord scrambled to find other ways to transport the HAWK missiles to Iran. Within hours, Clarridge met with the Chief of the CIA's air branch and told him "we [have] a very sensitive mission in the Middle East and we need a 747 aircraft right away." The branch chief could not locate such a large aircraft on short notice, but suggested that a CIA airline proprietary might be able to move the cargo.[101] At 4 p.m. on November 22, an air branch official called the CIA project officer for the proprietary, and asked whether its Boeing 707 cargo planes were available to move 80 pieces of "sensitive hi priority cargo" from Tel Aviv to the capital of Country 15. The project officer reported that at least one of the airline proprietary's planes was available.[102]

Clarridge's actions resulting in the involvement of the air proprietary were at North's request and with the authority of CIA Associate Deputy Director of Operations, Edward Juchniewicz.[103] Juchniewicz spoke with both Clarridge and North on November 22, and told them he had no objection to giving

Secord the commercial name of the airline proprietary to charter the necessary flights.[104] Over the next 48 hours, Clarridge and CIA air branch personnel closely managed the proprietary's flight activities in support of this covert operation.[105] Before the operation was over, the proprietary's project officer also became directly involved in coordinating matters.[106]

Clarridge Brings in Another CIA Chief

Even as the problems in Country 15 remained unresolved, Clarridge, on the evening of November 22, moved to obtain clearances from another country, Country 16, for overflight rights into Iran.[107] Clarridge cabled the CIA Chief in Country 16 proposing that he ask Government authorities for "overflight clearances for three commercial DC-8 aircraft (or similar aircraft) flying on a chartered basis from [Country 15] to Tabriz and then retracing their route." Clarridge explained that this was "a National Security Council initiative and has the highest level of USG [United States Government] interest." The CIA Chief was to explain that "the purpose of the flight is humanitarian in nature and is in response to terrorist acts." Clarridge specifically instructed that the U.S. Ambassador to Country 16 "should not be informed." [108]

Schwimmer's DC-8 Charter Falls Through

On the evening of November 22, Schwimmer called North to say the charter of the DC-8s for the Country 15-to-Iran leg of the mission had fallen through. In a PROF note to Poindexter, North updated the situation as of 7:00 p.m.:

> Unbelievable as it may seem, I have just talked to Schwimmer, in TA [Tel Aviv,] who advises that they have released their DC-8s in spite of my call to DK [David Kimche] instructing that they be put on hold until we could iron out the clearance problem in [the capital of Country 15]. Schwimmer released them to save $ and now does not think that they can be re-chartered before Monday.[109]

Within minutes of Schwimmer's call, North and Secord discussed a substitute method of transporting the missiles from Country 15 to Iran. Secord suggested that the European businessman's company try to find some planes.[110] North wrote to Poindexter that Secord would solve the problem by diverting a plane from the Contra operation to the Iran operation:

> Advised Copp of lack of p/u [pick up] A/C [aircraft]. He has advised that we can use one of our LAKE Resources A/C which was at [the capital of Country 15] to p/u a load of ammo for UNO [United Nicaraguan Opposition]. He will have the a/c repainted tonight and put into service nlt [no later than] noon Sat so that we can at least get this thing moving. So help me I have never seen anything so screwed up in my life. Will meet with Calero tonite to advise that the ammo will be several days late in arriving. Too bad, this was to be our first direct flight to the resistance field . . . inside Nicaragua. The ammo was already palletized w/ parachutes attached. Maybe we can do it on Weds. or Thurs.
>
> More as it becomes available. One hell of an operation.[111]

In fact, it appears that Lake Resources had no planes at this time. Nevertheless, this PROF note reveals that North was beginning to meld the two operations he was overseeing and to recognize that the Lake Resources enterprise could operate in a variety of settings.

Over the next 12 hours, Secord and others tried to hire a cargo carrier for the Country 15-to-Iran leg. They unsuccessfully sought to convince officials of a European national airline to take on the assignment.[113] By the morning of November 23, Secord had identified an aircraft to make the flight,[114] but this plane was never used.

Clarridge's Office Becomes the Command Post

By November 23, Clarridge's office at Langley had become the command post for coordinating the HAWK transport. North was there most of the day.[115] Also present and assisting were the CIA air branch chief, an intelligence officer, and Charles E. Allen.[116] Numerous problems with aircraft and flight clearances continued to crop up. As the situation deteriorated, Clarridge sent cables to the far-flung CIA stations involved, and North stayed in continuous contact with Secord in Country 15 and Schwimmer in Israel.

Clarridge's superiors, specifically Juchniewicz and McMahon, were aware of at least some aspects of the activity being directed from Clarridge's office. Juchniewicz's office received all of the cables being sent to and from Clarridge on the operation.[117] In a memorandum for the record written 2 weeks later, McMahon stated:

> On Saturday, 23 November 1985, Ed Juchniewicz asked me if I was aware of all the activity transpiring on the effort to get the hostages out. He showed me a cable to [the capital of Country 15] asking that we pass a message to the [Deputy Chief of Mission] from the Deputy Assistant to the President for National Security Affairs [Poindexter]. The message assured the [Deputy Chief of Mission] that only the Secretary of State and Ambassador Oakley were aware of the operation. I told Juchniewicz that I was unaware of the specifics of the operation but due

> to the sensitivity of the operation, it was appropriate that we pass correspondence between the NSC and the ambassadors overseas, but only communications, that we could not be involved without a Finding.[118]

McMahon testified that he did not know then that the CIA's airline proprietary had been brought into the operation.[119]

Allen also learned that day of the CIA role in the operation. North called him in the morning and asked him to deliver to Clarridge intelligence data on the Iran initiative. Allen showed the materials to Clarridge, who told him that North "had requested some assistance in obtaining a name of a reliable charter airline," that he was considering using the Agency's airline proprietary, and that he was trying to obtain landing and transit clearances in Country 15.[120]

The Oil-Drilling Equipment Cover Story

During the planning of the HAWK missile shipment, the Israeli and American participants agreed to keep the true nature of the operation secret. They would use a false "story line" that the cargo to Iran was oil-drilling equipment.[121] Several American officials who knew of the operation were advised of this cover story but understood that it was false and knew that the cargo was missiles.

At the time, the President and Regan knew that the cargo comprised HAWK missiles and were specifically told of the false story before the shipment was made, presumably by McFarlane. Regan testified: "I recall that that was to have been a cover story if discovered, it was to have been said that these were oil-drilling parts."[122]

The government of Country 15 also was aware that the clearances being sought by Secord and others were for moving missiles through its capital and into Iran as part of an effort to gain the release of American hostages. Secord understood that both the Prime Minister and Foreign Minister were informed. Indeed, Secord testified that it was not possible to ship HAWKs through the foreign capital without the host country knowing, because special handling of the weapons was required at the airport.[123]

North claims he used the cover story when he brought Clarridge and Allen into the operation. As he later testified, "I lied to the CIA because that was the convention that we had worked out with the Israelis, that no one else was to know."[124] Allen testified that North "stated emphatically" that the cargo was oil-drilling equipment, but that he (Allen) had "serious doubts" about whether this was true.[125]

If Clarridge did not know the contents of the cargo at the start, he soon learned it. In Country 15, late in the morning of November 23, Secord gave the CIA Chief a full accounting of the mission. Their meeting occurred in a car in a hotel parking lot. Secord revealed his identity, explained he was formally associated with the NSC, and specifically told the officer that the planned flight would contain HAWK missiles being sent to Iran in exchange for hostages.[126]

The CIA Chief testified that he returned to his office and sent two cables to Clarridge through the "Eyes Only" privacy channel he was using on the HAWK project. The first cable contained a general report, mentioning the discussion with Secord but not setting forth the substance of the conversation.[127] The second cable reported that the flights would contain HAWK missiles sent to secure the release of the hostages.[128] The Committees' investigation did not locate this cable. But the CIA Chief's subsequent testimony about its existence was corroborated in testimony by the CIA Deputy Chief[129] and by the Deputy Chief of Mission—who at the time either read the cable or was told about it by the CIA Chief.[130] In addition, the CIA communicator, who transmitted the cable from Country 15, vividly recalls being shocked when he read the message and learned that the United States was sending arms to Iran.[131]

Clarridge received additional information that revealed that the cargo was HAWKs: North testified that shortly after the shipment occurred, if not before, he had told Clarridge the true nature of the cargo.[132] Moreover, on November 23, Allen showed Clarridge a report that, according to Allen, would cause "one [to] think that this initiative had involved arms in the past."[133] Allen suspected that the November shipment also involved arms and "couldn't help but believe that [Clarridge] suspected that. Particularly he could see the [report] as clearly as I, and he leafed through [its contents] . . . I left the folder with him and then picked it up later."[134] After the shipment, Clarridge received additional information that made clear that the cargo was missiles.[135]

Clarridge insisted in testimony before these Committees that he had no recollection of having learned that the cargo was missiles prior to early 1986.[136] This testimony conformed to the false story certain Administration officials put out in November 1986 when they were trying to conceal the advance knowledge in the U.S. Government of the shipment of HAWK missiles.

The Committees are troubled by the fact that the cable informing Clarridge of Secord's detailed account of the operation, and an earlier cable Clarridge sent to the CIA Chief at the outset of the operation,[137] are inexplicably missing from an otherwise complete set of 78 cables sent by CIA officials during the operation.[138]

Country 15 Routing is Abandoned

By the afternoon of November 23, the plan to transship the missiles through Country 15 was abandoned. The previous evening, McFarlane had called the country's Foreign Minister and believed he had received a "green light" for the flights.[139] However, the foreign government still insisted that the United States provide a diplomatic note setting forth the nature of the cargo and the shipping route, and stating that the release of American hostages was the purpose of the shipment.[140] The foreign government wanted this documentation because it saw the operation as "so directly in conflict with known U.S. policy and [its own] policy."[141] The American planners balked,[142] apparently out of a concern about creating a formal paper record of the true nature of the operation. Later that day, the Deputy Chief of Mission, on instructions from Poindexter, handed the Foreign Minister a terse diplomatic note stating that the U.S. Embassy "expresses regret that the Government of [Country 15] was unable to fulfill the request of the Government of the United States for the humanitarian mission."[143] Clarridge cabled the CIA Chief in the capital of Country 15 that in light of the diplomatic message, "it is obvious . . . that we are closing down [the Country 15] aspect of this operation."[144]

As the Country 15 transit plan was falling through, North and Clarridge sought a substitute transit point. Clarridge cabled the CIA Chief in the capital of another country, Country 18, to request assistance in obtaining landing rights in that country for "5 sorties" by a CIA airline proprietary 707 airplane between Tel Aviv and Tabriz, the first to occur "in the next 12 hours or so . . . and likely result in the release of the hostages."[145]

Meanwhile, still on November 23, Israeli military personnel began to load the HAWKs into the CIA proprietary airplane at the Tel Aviv airport. If they had not already been told, the proprietary's crew surmised from the appearance of the crates that their cargo was missiles and reported this to the airline manager.[146]

Later that day, the participants decided to move the shipment directly from Tel Aviv to Iran, without transiting a third country. Under the new plan, one of the proprietary's planes would make a series of flights to move the 80 HAWKs.[147] After dismissing one route, the planners selected a shorter—but more dangerous—route across Country 16.[148] But obtaining overflight clearances from Country 16 remained a problem, so Clarridge once again cabled the CIA Chief there.[149] Several hours later, the CIA Chief replied that the Government of Country 16 was supportive, but needed "some idea of what the aircraft would carry as presumably they would not be empty."[150] Late that night, Clarridge sent two more increasingly urgent cables to the CIA Chief in Country 16. In conformity with the cover story, these cables told the CIA Chief to advise the government of Country 16 that "the aircraft are carrying sophisticated spare parts for the oil industry" and that the five flights would be spread over a number of days.[151]

North and Clarridge, working with Schwimmer, continued to coordinate the flight activity on Sunday, November 24. At the last minute, they decided that, at least on the first sortie, the plane should land at a transit point in another country, Country 17, to disguise the fact that the shipment was moving from Israel to Iran.[152] While this decision was being made, the CIA Chief in Country 16 informed Clarridge that the government there had approved the five overflights, but that "incoming flight cannot come directly from [Country 17]."[153]

CIA Airline Proprietary Moves the Missiles

On November 24, the CIA proprietary aircraft carrying 18 HAWK missiles flew from Tel Aviv to the transit point in Country 17. Because Schwimmer had sent the plane without a cargo manifest, the pilot lacked the documentation required by customs officials at the transit point, who wanted to inspect the cargo.[154] Simultaneously, Schwimmer and the proprietary manager, along with North and Clarridge, frantically discussed how to solve this. While there is evidence to the contrary, it seems the pilot simply talked his way out of the problem.[155]

After getting out of the transit point in Country 17, the pilot ran into trouble while flying over Country 16. According to the airline manager's report,

> nothing was prepared for overflight in [Country 16] and [the pilot] had again to talk his way through. Since they [the Country 16 ground controllers] repeatedly insisted on a diplomatic clearance number, he made one up which was not accepted after long negotiations and then he filibustered one hour and 30 min his way through [Country 16], using different altitudes, positions and estimates that he told [Country 16's] Military with whom he was obviously in radio contact . . .
>
> However, radar realized his off-positions which gave additional reason for arguments and time delays.[156]

Cables the next day from the CIA Chief in Country 16 to Clarridge suggested several reasons why the pilot encountered these difficulties. For example, the destination of the plane was changed at the last minute from Tabriz to Tehran, which "provoked query" from Country 16 because it did not square with the clearance request.[157] Other discrepancies caused outright anger:

> [An official of Country 16 was] quite upset over multiple flight plans received, fact first flight came directly from [the transit point in Country 17] and did not request clearance beforehand and conflicting stories about plane's cargo. [The CIA

> Chief] told [the official] it was oil industry spare parts, telex from carrier stated medical supplies and the pilot told ground controllers he was carrying military equipment. . . .
>
> Bottom line is that [the government of Country 16] still wants to assist but has developed a little cynicism about our interaction with them on the matter.[158]

Ironically, the pilot reportedly told the flight controllers the true nature of the cargo even while Clarridge was spreading the cover story to high level officials of Country 16.[159]

The only part of the operation that went smoothly was the flight into Tehran. The Second Iranian Official and Ghorbanifar, who were in Geneva, passed word to officials in Tehran to prepare to receive the plane. The plane landed in Tehran early in the morning.[160] After an encounter with a military officer who apparently was unaware of the operation, "a civilian with a submachine gun on his back" arrived at the aircraft.[161] The pilot understood that this person was a member of the Iranian Revolutionary Guard. He instructed the pilot not to disclose to anyone at the airport that the flight had originated in Israel, arranged for the unloading of the plane by military personnel, and got the crew to a hotel—formerly the Sheraton—in downtown Tehran.[162]

Fourteen hours later, after a warm send-off that included caviar, the plane departed Tehran at 12:15 p.m. E.S.T., on Monday, November 25.[163] The airline proprietary crew expected they would return shortly with more missiles and told the Iranian at the airport, "Don't worry, we [will] come back."[164] However, the airline manager radioed them after they were airborne and instructed them not to return to Israel.[165] Problems surfacing in both Washington and Iran put an end to the CIA proprietary airline's role. Within a few days, Secord, using funds from the Lake Resources account, wired a $127,700 payment to the proprietary.[166]

Aftermath of the HAWK Flight

The Failure Sinks In

On November 25, with the Americans still entertaining the hope that one or more hostages might be released, senior White House and CIA officials were informed about the weekend's activities. Poindexter told the President at his regular 9:30 a.m. briefing that a shipment of arms to Iran had just taken place.[167]

At 7 a.m. that morning at CIA headquarters, Edward Juchniewicz told McMahon that Secord and "those guys" at the NSC had "used our proprietary to send over some oil supplies" to Iran. McMahon's reaction was anger:

> I said goddam it, I told you not to get involved. And he [Juchniewicz] said, we're not involved. They came to us and we said no. And they asked if we knew the name of a secure airline and we gave them the name of our proprietary. I said, for Christ's sake, we can't do that without a Finding.[168]

McMahon said that at the time he accepted Juchniewicz's report that the cargo had been oil-drilling equipment: "[M]y focus was that we had done something wrong . . . and I didn't care what was on that airplane." McMahon's view was that any use of the CIA airline proprietary at the direction of CIA but without a Presidential Finding was illegal.[168a]

Shortly after talking to Juchniewicz, McMahon went to Deputy Director for Operations Clair George's office where several staffers were discussing the weekend's activities. McMahon told them "that they weren't going to do anything more until we got a Finding."[169] That same morning, North sent word to Schwimmer that the operation was to be put on hold.[170]

McMahon also moved quickly to contact CIA General Counsel Stanley Sporkin on the matter of the airline proprietary's activity.[171] McMahon testified that "during the day I called Sporkin several times and I told him that I wanted a Finding and I wanted it retroactive to cover that flight."[172] Sporkin recalled that McMahon simply asked him to look into the legal aspects of the activity, but did not declare that a Finding was necessary.[173]

Late in the day, two officers from the Operations Directorate, an air branch officer and his group chief, were directed to brief Sporkin on the proprietary's flight.[174] The CIA officials most involved in the operation—Clarridge, Allen, and the chief of the air branch—were not selected to do the briefing. At Sporkin's request, his deputy, J. Edwin Dietel, sat in on the briefing.[175]

The participants' accounts of the briefing of Sporkin differed significantly. The air branch subordinate officer said that the meeting lasted about 45 minutes and that he and his superior explained to the lawyers that the airline proprietary—acting at the direction of the NSC staff and with the approval of Juchniewicz—had moved some cargo from Israel to Iran. He testified that as of November 25, he knew nothing about the cargo other than its weight and dimensions and that that was the only information about the cargo that was discussed at the briefing. He recalled that the lawyers exhibited no curiosity about the nature of the cargo and that there was no mention that the cargo was either oil-drilling equipment or military equipment. He also testified that nothing was said to indicate that the proprietary's flight was related to an effort to free hostages.[176]

The CIA group chief said he did not even know of the activity being scrutinized until that morning. He stated in an interview that he and the subordinate explained that a CIA proprietary plane, acting in a strictly commercial capacity, had carried "commercial cargo" into Iran. The subject of weapons being aboard the plane did not arise, he said. He added that at this point he understood that the cargo might have been farm equipment and that the shipment was not part of an NSC staff operation.[177]

Notwithstanding these divergent accounts from officials of the Operations Directorate, it is clear that the briefers told Sporkin that missiles had been transported, and the shipment was part of an effort to free the hostages. Sporkin testified: "What they told me indicated an involvement in a shipment of arms to Iran."[178] Sporkin's deputy, Deitel, specifically recalled that the briefers said the cargo was missiles.[179] Sporkin testified that the briefers probably specified the exact type of missiles being shipped.[180]

During the briefing, Sporkin tentatively concluded that a covert action Finding was necessary to authorize the previous activity.[181] He stated that there should be no more flights to move the rest of the cargo in Israel until the matter could be looked into further.[182] After the briefers left, two senior staff attorneys, whom Sporkin had enlisted earlier and who were waiting for the briefing to end, were called into the room. Sporkin related to them that a shipment of "military equipment or missiles" from Israel to Iran had just occurred and that more flights were contemplated.[183]

Sporkin then dictated a draft Finding that authorized the CIA to assist in "efforts being made by private parties" to obtain the release of hostages through the provision of "certain foreign materiel and munitions" to the Government of Iran. The draft stated that Congress would not be notified of the operation "until such time as [the President] may direct otherwise" and that the Finding "ratifies all actions taken by U.S. Government officials in furtherance of this effort."[184] Sporkin directed one of the lawyers, Bernard Makowka, to stay late and work on the Finding.[185] Later that night, Sporkin informed McMahon "that a Finding would be required, not so much from the airlift standpoint, but from our involvement in influencing foreign government officials to assist the mission."[186] Sporkin and his deputies met on the morning of November 26, and worked up a final draft of the Finding.[187] In its entirety, the Finding stated:

> *Finding Pursuant to Section 662 of The Foreign Assistance Act of 1961, As Amended, Concerning Operations Undertaken by the Central Intelligence Agency in Foreign Countries, Other Than Those Intended Solely for the Purpose of Intelligence Collection.*
>
> I have been briefed on the efforts being made by private parties to obtain the release of Americans held hostage in the Middle East, and hereby find that the following operations in foreign countries (including all support necessary to such operations) are important to the national security of the United States. Because of the extreme sensitivity of these operations, in the exercise of the President's constitutional authorities, I direct the Director of Central Intelligence not to brief the Congress of the United States, as provided for in Section 501 of the National Security Act of 1947, as amended, until such time as I may direct otherwise.
>
> SCOPE: Hostage Rescue—Middle East
>
> DESCRIPTION
>
> The provision of assistance by the Central Intelligence Agency to private parties in their attempt to obtain the release of Americans held hostage in the Middle East. Such assistance is to include the provision of transportation, communications, and other necessary support. As part of these efforts certain foreign materiel and munitions may be provided to the Government of Iran which is taking steps to facilitate the release of the American hostages.
>
> All prior actions taken by U.S. Government officials in furtherance of this effort are hereby ratified.[188]

The draft Finding referred to no objective of opening a diplomatic channel with Iran. Yet, this was the justification for the arms deals that the Administration offered after they were exposed in November 1986. Rather, the Finding depicted a straight swap of arms for hostages.

Sporkin sent the proposed Finding to Casey on November 26.[189] That morning, Clair George phoned North to tell him that Sporkin had determined a Finding was necessary.[190] Later that day, after Casey called McFarlane and Regan "to ascertain that indeed this had Presidential approval and to get assurances that a Finding would be so signed," Casey, who agreed a Finding was needed,[191] delivered the text to Poindexter.[192] Poindexter did not immediately present it to the President. Over the next several days, Casey, McMahon, and George made repeated inquiries to Poindexter and other "NSC personnel" and "continuously receive[d] reassurances of the President's intent to sign the Finding."[193]

The President Renews His Approval

On the day the CIA sent the proposed Finding to the White House, November 26, the President authorized continuing the arms-for-hostages transaction.[194]

North's notes indicate that he was so informed by Poindexter at an hour-long meeting:

> 0940-1050. Mtg w/JMP. RR directed op[eration] to proceed. If Israelis want to provide diff model, then we will replenish. We will exercise mgt over movmt if yr side cannot do. Must have one of our people in on all activities.[195]

Later that day, North related to an Israeli official that the Americans wanted to carry on even if the supply of additional arms was needed and even if the weapons had to come from the United States.[196] But events not within the control of the American side prevented immediate progress in accord with the renewed authorization of the President.

The Iranians Feel Cheated

After midnight on November 26, Allen learned that officials in Iran were upset that the wrong model of HAWKs had been delivered.[197] The Iranians also complained through Ghorbanifar that the missiles had Israeli markings, which "the Iranians took to be a prov[o]cation."[198]

On November 25 or 26, Ghorbanifar, "on the very edge of hysteria," called NSC consultant Michael Ledeen, and said "the most horrible thing had happened. . . . [T]hese missiles had arrived and they were the wrong missile."[199] Ghorbanifar gave Ledeen an urgent message from the Prime Minister of Iran for President Reagan: "We have done everything we said we were going to do, and you are now cheating us, and you must act quickly to remedy this situation." Ledeen conveyed this to Poindexter.[200]

At this point, North dispatched Secord to Israel. During meetings with Kimche and Schwimmer, Secord quickly deduced the source of Iran's displeasure: according to him, Schwimmer and Nimrodi had promised Ghorbanifar that the missiles being provided could shoot down high-flying Soviet reconnaissance planes and Iraqi bombers. The I-HAWK missiles that were provided, like all HAWKs, had no such capability.[201] The Iranians were insisting that "these embarrassing missiles" be removed from Tehran.[202]

Money Flows Back and Forth

In advance of the HAWK shipment, on November 22, Iran made two transfers—one of $24.72 million, the other of $20 million—to bank accounts in Switzerland to which Ghorbanifar had access.[203] Iran apparently understood that the larger transfer was its purchase price for 80 HAWKs, at a unit cost of approximately $300,000.[204]

On November 22, Ghorbanifar transferred to an Israeli intermediary's account $18 million and $6 million.[205] According to an Israeli intermediary, the $18 million was the purchase price paid by Ghorbanifar for 80 HAWKs and the $6 million was to be held in trust by the Israeli intermediary at Ghorbanifar's request. Later, it was to be paid back to Ghorbanifar, with Ghorbanifar intending to keep $1 million for himself and use the remainder for payments to certain Iranians.[206] North was aware of the $18 million deposit. On November 20, he wrote in his notebook: "18M Deposited Covers 80H 225K." [207]

Around the time that the Israeli intermediary received these funds from Ghorbanifar, he transferred $1 million to Lake Resources on North's demand.[208] On November 22, the Israeli intermediary paid the Israeli Ministry of Defense $11.2 million for the 80 HAWKs at a price of $140,000 per missile.[209] Thus, the Israeli intermediary had received from Ghorbanifar $11.8 million more than his total payments to Israel and Lake Resources. According to the Israeli intermediary as reported in the Israeli Financial Chronology, $6 million of this residual was held in trust by the Israeli intermediary for Ghorbanifar and the remaining $5.8 million was to cover shipping and other expenses for the rest of the operation.[210] The Chronology indicates that Ledeen and North agreed with the Israeli intermediary that this money be kept in the Israeli intermediary's account for these purposes.[211]

Israel intended to purchase replacement HAWKs with the sum received from the Israeli intermediary. It was doubtful whether the amount received—$140,000 per missile—would be enough to purchase replacements at standard U.S. prices. On November 19, North and the head of the Israeli Procurement Mission in New York discussed replenishment, and North's notes of the conversation refer to a price of "$220K/230K each for Hawks." [212] However, Poindexter had instructed North, and North had told the Israelis, "that we will sell them [Israel]" replacement HAWKs "at a price that they can meet." [213]

When the HAWK deal collapsed in late November, the Israelis and Ghorbanifar reversed the flow of funds. On November 27, the Israeli Ministry of Defense returned $8.17 million to the Israeli intermediary. This was $3.03 million less than the Israelis had paid to the Ministry of Defense. The difference, according to the Israeli Chronology, represented the prorated charge for the 18 missiles delivered to Iran at $140,000 per item and a deduction of $510,000 for expenses incurred by the Ministry of Defense in the HAWK transaction and in previous transactions.[214]

Also on November 27, the Israeli intermediary transferred to Ghorbanifar the sum of $18.6 million. This represented a prorated refund of Iran's purchase price for the 62 HAWKs that had not been delivered.[215] Thus, at the end of November 1985, the Israelis held more than $5 million in residuals from the failed transaction, most of which was repaid to Ghorbanifar by the Israeli intermediary and to the Israeli Ministry of Defense after Iran returned 17 HAWKs to Israel in early 1986.[216]

Conclusion

The shipment of HAWKs to Iran was bad policy, badly planned and badly executed. In contradiction to its frequently emphasized public policy concerning the Iran-Iraq war and nations that support terrorism, the United States had approved the sale of arms to Iran. The United States had agreed to a sequential release of hostages following successive deliveries of weapons; thereafter, this departure from policy became the norm. This precedent, established in November 1985, gave the Iranians reason to believe that the United States would retreat in the future from its demand for the release of hostages prior to any weapons shipments.

The planning and execution of the operation were also flawed. By the time the U.S. Government became directly involved, official disclaimers by unwitting State Department officials had already complicated the foreign relations aspect of the project. And the mission itself jeopardized the security of the CIA airline proprietary's operation.[217]

Finally, the cover story that was used by certain NSC and CIA officials in November 1986 was first employed in November 1985 for purposes of operational security. The President, Secretary Shultz, McFarlane, Poindexter, North, and various CIA officials, however, were fully aware in November 1985 that Israel was shipping HAWKs to Iran—not oil-drilling equipment—with U.S. approval and assistance to obtain the release of the American hostages.

Chapter 10

1. North Notebook, 10/30/85, Ex. CG-40, *Hearings*, 100-11.

2. *Id.*

3. *Id.*

4. McFarlane Calendar, 11/8/85, MF000856-57; Ledeen Dep., 6/22/87, at 231

5. McFarlane Test., *Hearings*, 100-2, at 97.

6. Ledeen Dep., 6/22/87, at 231.

7. North Calendar, 11/14/85, N329.

8. North Notes, 11/14/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

9. North Notes, 11/19/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

10. North Test., Executive Session, 7/9/87, at 6-10.

11. McMahon, Memorandum for the Record, 11/15/85, C4510.

12. McMahon Dep., 6/1/87, at 90.

13. *Id.*

14. McFarlane Test., *Hearings*, 100-2, at 97, 100. According to the Israeli Historical Chronology, Rabin did not discuss with McFarlane during this visit that Israel was planning another arms shipment to Iran.

15. *Id.* at 51-52, 100.

16. Israeli Historical Chronology. According to the Israelis, in a telephone conversation on November 21, Rabin stressed to McFarlane that if the Iranian project were not viewed as a joint U.S.-Israel operation, Israel would not undertake it alone. *Id.*

17. Israeli Historical Chronology; see also McFarlane Test., *Hearings*, 100-2, at 97.

18. Regan Test., *Hearings*, 100-10, at 12.

19. McFarlane Test., *Hearings*, 100-2, at 51-52.

20. McFarlane Tower Int., 2/19/87, at 41.

21. North Notebook, 11/17/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

22. North Notebook, 11/18/87, Ex. OLN-69A, *Hearings*, 100-7, Part III.

23. North Notebook, 11/18/85, Ex. OLN-69A, *Hearings*, 100-7, Part III. According to the Israelis, Israel approved only a shipment of 80 HAWKs. Israeli Historical Chronology.

24. Israeli Financial Chronology. On November 19, North and the head of the Israeli Procurement Mission in New York discussed a sale by the United States to Israel of 600 of the Pentagon's most advanced version of the HAWK missile, presumably to replenish a similar number of HAWKs to be shipped by Israel to Iran. North Notebook, 11/19/85, Ex. OLN-69A, Hearings, 100-7, Part III.

25. Airline Proprietary Manager Memorandum, 11/21/85, C9706; Airline Proprietary Manager Dep., 6/11/87, at 71-74.

26. Airline Proprietary Manager Memorandum, 11/21/85, C9706; Airline Proprietary Manager Memorandum, 11/30/85, C6522-C6529, at 6; Airline Proprietary Manager Dep., 6/11/87, at 71.

27. Airline Proprietary Manager Memorandum, 11/21/85, C9706.

28. Airline Proprietary Manager Dep. at 80; Airline Proprietary Manager Memorandum, 11/30/85, C6522-C6529 at 1, 6.

29. PROF Note from North to Poindexter, 11/20/85, Ex. JMP-17, *Hearings*, 100-8.

30. North Notebook, 11/20/85, Ex. JMP-84, *Hearings*, 100-8.

31. *Id.*

32. *Id.*

33. North Test., *Hearings*, 100-7, Part I, at 51, 59; North Notebook, 11/17/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

34. *Id.*

35. *Id.* The Arms Export Control Act bars the President from authorizing a transfer of any "major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more" unless he submits an unclassified report on the sale to the Speaker of the House and the Senate Committee on Foreign Relations. 22 U.S.C. Section 2753(d).

36. North Test., *Hearings*, 100-7, Part I, at 51.

37. Powell Dep., 6/19/87, at 15-19.

38. Gaffney Test., *Hearings*, 100-6, at 133-39; Ex. DOD 1, 3, 5, *Hearings*, 100-6. Gaffney's notes of November 18-19 also indicate that the United States had shipped 100 HAWKs to Israel 2 weeks previously. In fact, on November 21, 1985, an Israeli ship, Zim Houston, took on 100 HAWKs and other weapons in New Jersey and sailed for Israel. Those HAWKs were transferred pursuant to a Letter of Offer and Acceptance between the United States and Israel entered into in 1982. (Validated Shipper's Export Declaration and attachments, 11/6/85, U.S. Customs, N.Y., N.Y. S2045659).

39. Gaffney Test., *Hearings*, 100-6, at 112.

40. Powell Dep., 6/19/87, at 32-33.

41. Weinberger Dep., 6/17/87, at 22-23, Ex. CWW-9.

42. Ex. DOD-5, *Hearings*, 100-6. Gaffney's paper provided as follows:

> The modalities for sale to Iran present formidable difficulties:
>
> Iran is not currently certified for sales, including indirectly as a third country, per Sec. 3 of the AECA.
>
> Congress must be notified of all sales of $14 million or more, whether it is a direct sale or indirect to a third country. The notice must be *unclassified* (except for some details), and the sale cannot take place until *30 days* after the notice. The 30 days can be waived for direct sales, but the third country transfer has no such provision, and notice must still be given in any case.
>
> Thus, even if the missiles were laundered through Israel, Congress would have to be notified.
>
> It is conceivable that the sale could be broken into 3 or 4 packages, in order to evade Congressional notice. While there is no explicit injunction against splitting up such a sale (subject to check . . .), the spirit and the practice of the law is against that, and all Administrations have observed this scrupulously.

Ex. DOD-5, *Hearings*, 100-6.

43. Gaffney Test., *Hearings*, 100-6, at 61-64.

44. McFarlane Test., *Hearings*, 100-2 at 102; Regan Test., *Hearings*, 100-10, at 13.

45. In retrospect, McFarlane quantified his hope for release of the hostages at no more than a 20 percent probability. McFarlane Test., *Hearings*, 100-2, at 102. Even this would have been too optimistic. A CIA polygraph test of Ghorbanifar 2 months later "indicated that he knew ahead of time that the hostages would not be released and deliberately tried to deceive us. . . ." Memorandum for the Record, Subject: Manucher Ghorbanifar Polygraph Examination, C6090.

46. McFarlane Test., *Hearings*, 100-2, at 102.

47. Regan Test., *Hearings*, 100-10, at 13.

48. McFarlane Test., *Hearings*, 100-2, at 261.

49. McFarlane Test., *Hearings*, 100-2, at 55. This meeting occurred on December 7.

50. McFarlane Test., *Hearings*, 100-2, at 102.

51. Shultz Test., *Hearings*, 100-9, at 28.

52. *Id.* at 28; Charles Hill Notes, 11/18/85, Cooper Ex. CJC-17, *Hearings*, 100-6.

53. Shultz Test., *Hearings*, 100-9, at 28-29.

54. McFarlane Test., *Hearings*, 100-2, at 102.

55. Shultz Test., *Hearings*, 100-9, at 29.

56. North told Poindexter a few days later that direct flights would "compromise origins and risk eventual uncovering of many operational details." North PROF message to Poindexter, 11/22/85 (19:27:15) Ex. OLN-45, *Hearings*, 100-7, Part III. Historically, weapons shipments to Iran from Israel during the last decade had been disguised by moving them through other countries. A purpose for disguising such flights is to prevent the Iraqis from intercepting them. Airline Proprietary Manager Dep., 6/11/87, at 24-27.

57. CIA Air Proprietary Pilot Dep., 6/25/87, at 77.

58. North Test., *Hearings*, 100-7, Part I, at 51.

59. Secord Dep., 6/10/87, at 85-86.

60. Secord Test., *Hearings*, 100-1, at 79-80.

61. Letter from McFarlane to Secord, 11/19/85, Ex. 1, *Hearings*, 100-1, at 415.

62. McFarlane Test., *Hearings*, 100-2, at 209.

63. Secord Dep., 6/10/87, at 83-84.

64. Secord Test., *Hearings*, 100-1, at 80.

65. North Notebook, 11/18/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

66. North to Poindexter PROF Note, 11/22/85, (19:27:15) Ex. OLN-45, *Hearings*, 100-7, Part III.

67. North Test., *Hearings*, 100-7, Part I, at 58; Panamanian Public Instrument, 5/14/85, H679.

68. CSF Ledger for Lake Resources, H986.

69. Secord Test., *Hearings*, 100-1, at 83, 87-88; North Test., *Hearings*, 100-7, Part I, at 54.

70. Israeli Historical Chronology.

71. Secord Test., *Hearings*, 100-1, at 80; Secord Dep., 6/10/87, at 89.

72. Secord Dep., 6/10/87, at 87-88; Secord Test., *Hearings*, 100-1, at 88.

73. On November 22, Secord arranged a charter for several fights between Tel Aviv and Country 15 at a total cost of $60,000, plus fuel, landing, and handling costs. These flights never occurred. Airline Proprietary Manager's Memorandum Re: Mission TLV/THR, 11/30/85, C6522; Airline Proprietary Manager Dep., 6/11/87, at 65-66. Secord ultimately paid $127,700 to the CIA airline proprietary, which flew two planes to Tel Aviv and one to Tehran via Country 17. Airline Proprietary Receipt Records, 11/29/85 and 12/3/85, C6567 and C6573.

74. DCM Dep., 5/27/87, at 24-25.

75. After the flight to Tehran, Secord—who was then in Paris—remarked to the manager of the proprietary airline that he had "to go back to [the capital of Country 15] to save $225,000." Airline Proprietary Manager Dep., 6/11/87, at 148, 171. An entry in North's notebook states "Dick Copp—Spent 750K in [Country 15]." North Notebook, 11/24/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

76. Financial Chronology, Accounting Workpaper. In addition to the $127,700 paid to the CIA air proprietary, Secord spent $21,983 on chartering a private jet to attend meetings related to the operation.

77. North Test., *Hearings*, 100-7, Part I, at 56.

78. Secord Dep., 6/10/87, at 88-89.

79. Secord Dep., 6/10/87, at 99.

80. CIA cables after the operation was over explained that these were the reasons for the poor reception. CIA Cables, capital of Country 15 to Headquarters, 11/26/85 and 11/27/85, C5794-95 and C5796-97.

81. DCM Dep., 5/27/87, at 24-25.

82. Cable from American Embassy in Country 15 to Department of State Headquarters, 11/22/85, S000304.

83. CIA Cable, capital of Country 15 to Headquarters, 11/23/85, C5758-59.

84. *Id.*

85. PROF Note, North to Poindexter, 11/20/85, 21:27:39, Ex. JMP-17, *Hearings*, 100-8.

85a. North Notebook: 11/21/85, Ex. OLN-69A, Hearings, 100-7, Part III.

86. North Notebook, 11/21/85, Ex. OLN-69A, *Hearings*, 100-7, Part III; Clarridge Dep., 4/27/87, at 7-8.

87. North Notebook, 11/21/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

88. CIA Cables, Headquarters to capital of Country 15, 11/22/85, Ex. DRC-1-1 and 1-2, *Hearings*, 100-11.

89. CIA Cable, capital of Country 15 to Headquarters, 11/22/85, Ex. DRC-1-4, *Hearings*, 100-9.

90. Oakley Affidavit, 7/2/87, Ex. GPS-55., *Hearings*, 100-9.

91. CIA Cable, Headquarters to capital of the Country 15, 11/22/85, Ex. DRC1-5, *Hearings*, 100-11.

92. Letter from John A. Rizzo to Paul Barbadoro, 7/17/87, C10123.

93. Shultz Tower Test., 1/22/87, at 28.

94. Shultz Test., *Hearings*, 100-9, at 29.

95. CIA Cable, Headquarters to capital of Country 15, 11/22/85, Ex. DRC-1-6, *Hearings*, 100-11.

96. CIA Cable, capital of Country 15 to Headquarters, 11/22/85, Ex. DRC 1-7, *Hearings*, 100-11.

97. *Id.*

98. CIA Cable, capital of Country 15 to Headquarters, 11/22/85, Ex. DRC-1-8, *Hearings*, 100-11.

99. North Notebook, 11/22/85 (incorrectly dated 11/21/85), Ex. OLN-69A, *Hearings*, 100-7, Part III.

100. PROF Note, North to Poindexter, 11/22/85 (19:27:15), Ex. OLN-45, *Hearings*, 100-7, Part III.

101. CIA air branch chief Dep., 6/19/87, at 19-22.

102. Handwritten Notes of CIA Airline Proprietary Project Officer, 11/22/85, C6535-C6538.

103. Clarridge Dep., 4/27/87, at 59-60.

104. Juchniewicz Dep., 4/23/87, at 8-19.

105. CIA air branch chief Dep., 6/19/87, at 22-31.

106. Airline Proprietary Project Officer Dep., 6/12/87, at 69

107. North had incorrectly reported to Poindexter two days earlier that this matter had already been taken care of. North PROF message to Poindexter, 11/20/85 (21:27:39), Ex. JMP 17, *Hearings*, 100-8.

108. CIA Cable, Headquarters to capital of Country 16, 11/22/85, Ex. OLN-61, *Hearings*, 100-7, Part III.

109. PROF Note, North to Poindexter, 11/22/85 (19:27:15), Ex. OLN-45, *Hearings*, 100-7, Part III.

110. North Notebook, 11/22/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

111. PROF Note, North to Poindexter, 11/22/85 (19:27:15), Ex. OLN-45, *Hearings*, 100-7, Part III.

113. CIA Cable, capital of Country 15 to Headquarters, 11/23/85, Ex. DRC 1-19, *Hearings*, 100-11.

114. CIA Cable, capital of Country 15 to Headquarters, 11/23/85, C5742.

115. North Test., *Hearings*, 100-7, Part I, at 60.

116. CIA air branch chief Dep., 6/19/87, at 21-25.

117. The cable routings reflect that the copies of cables were sent to office of the Directorate of Operations.

118. Memorandum for the Record, Subject: NSC Mission, John N. McMahon, 12/7/85, Ex. DRC-12, *Hearings*, 100-11.

119. McMahon Dep., 6/1/87, at 104.

120. Allen Dep., 4/21/87, at 157-61.

121. North Test., *Hearings*, 100-7, Part I, at 38.

122. Regan Test., *Hearings*, 100-10, at 24.

123. Secord Dep., 6/10/87, at 100-01.

124. North Test., *Hearings*, 100-7, Part I, at 38.

125. Allen Dep., 4/21/87, at 161, 165, 176-77.

126. CIA Chief in Country 15 Dep., 4/13/87, at 19-21.

127. CIA Cable, capital of Country 15 to Headquarters, 11/23/85, Ex. DRC 1-19, *Hearings*, 100-11.

128. CIA Chief in Country 15 Dep., 4/13/87, at 25-28.

129. Deputy CIA Chief in Country 15 Dep., 7/15/87, at 30-35. In addition, CIA records confirm that a cable of which no copy can be found was sent at this time and assigned a unique file number.

130. DCM Dep., 5/27/87, at 34-37.

131. CIA Communicator Dep., 7/13/87, at 66-68.

132. North Test., *Hearings*, 100-7, Part I, at 63, 70.

133. Allen Dep., 7/2/87, at 674.

134. *Id.* at 676.

135. North Test., *Hearings*, 100-7, Part I, at 38; Allen Dep., 4/21/87, at 167-68; Clarridge Test., *Hearings*, 100-11, at 7, 20-21.

136. Clarridge Test., *Hearings*, 100-11, at 8, 20-21.

137. The first cable that the CIA Chief in Country 15 sent to Headquarters on this matter stated it was a reply to Cable 625103. CIA Cable, capital of Country 15 to Headquarters, 11/22/85, Ex. DRC 1-3, *Hearings*, 100-11. No cable having this number was located.

138. The Committees have been informed that copies of privacy channel cables are ordinarily sent to the office of the Deputy Director for Operations. CIA officials have searched for the missing cables, and they were unable to locate them or account for the fact that they are missing. The Committees have also been informed that officers assigned to the office of the Deputy Director for Operations do not have a recollection of seeing the missing cables.

139. PROF Note, North to Poindexter, 11/22/85 (19:27:15), Ex. OLN-45, *Hearings*, 100-7, Part III; CIA Cable from capital of Country 15 to Headquarters, 11/26/85, C5794-95.

140. DCM Dep., 5/27/87, at 10, 20-21; CIA Chief in Country 15 Dep., 4/13/87, at 16, 22.

141. CIA Cable from capital of Country 15 to Headquarters, 11/26/85, C5794-95.

142. DCM Dep., 5/27/87, at 22-24.

143. *Id.* at 24; Diplomatic Note from U.S. Embassy in Country 15 to Ministry of Foreign Affairs, 11/23/85, Ex. GPS-14, *Hearings*, 100-9.

144. CIA Cable, Headquarters to capital of Country 15, 11/23/85, Ex. DRC 1-29, *Hearings*, 100-11.

145. CIA Cable, Headquarters to capital of Country 18, 11/23/85, Ex. OLN-62, *Hearings*, 100-7, Part III.

146. Airline Proprietary Pilot Dep., 6/25/87, at 49-50, 64, 141; Airline Proprietary Manager Dep., 6/11/87, at 108-09. In fact, the crew immediately surmised it was a large armament cargo which the airline proprietary had learned a few days earlier was being moved from the capital of Country 15 to Iran under a cover story that it was medicine. Airline Proprietary Manager Dep., 6/11/87, at 71-77. Two days later, the proprietary's project officer told the CIA's air branch chief that the crew believed that the cargo was missiles and had joked that "we should be firing them at Iran rather than flying them into Iran." Airline Proprietary Project Officer Dep., 6/12/87, at 48-49. The air branch chief testified that he did not know the cargo was missiles until months later. CIA air branch chief Dep., 6/19/87, at 43-44.

147. Airline Proprietary Manager Memorandum, 11/30/85, Re: Mission TLV/THR, C6523-24 (hereinafter "Airline Proprietary Manager's Report"), at 2-3. The Americans decided it was too dangerous to fly the other plane into Iran because it was registered in the United States. The plane which was used was registered in another western hemisphere country. Schwimmer argued the U.S. plane could be used safely by painting a false registration on its tail or by flying it in a formation with the other plane so as to disguise it from radar operators. The airline proprietary manager reported to CIA that Schwimmer "must be crazy" and rejected these proposals. *Id.* at 3; Airline Proprietary Project Officer Dep., 6/12/87, at 37-38; Airline Proprietary Manager Dep., 6/11/87, at 116-19.

148. Airline Proprietary Pilot Dep., 6/25/87, at 40-42, 48.

149. CIA Cable, Headquarters to capital of Country 16, 11/23/85, C5749.

150. CIA Cable, capital of Country 16 to Headquarters, 11/23/85, C5759.

151. CIA Cable, Headquarters to capital of Country 16, 11/24/85, C5763; CIA Cable, Headquarters to capital of Country 16, 11/24/85, C5764.

152. Airline Proprietary Manager Dep., 6/11/87, at 138-39.

153. CIA Cable, capital of Country 16 to Headquarters, 11/24/85, C5767.

154. Airline Proprietary Pilot Dep., 6/25/87, at 56-57, 70 71; Airline Proprietary Manager's Report at 4.

155. Airline Proprietary Project Officer Dep., 6/12/87, 41-42.

156. Airline Proprietary Manager's Report, at 4.

157. CIA Cable, capital of Country 16 to Headquarters, 11/25/85, C5774.

158. CIA Cable, capital of Country 16 to Headquarters, 11/25/85, C5775.

159. The pilot denied that he had any serious problems with the overflight of Country 16 and insisted he did not

and would never tell ground controllers he was carrying arms. Airline Proprietary Pilot Dep., 6/25/87, at 78-79.

160. Airline Proprietary Pilot Dep., 6/25/87, at 96.

161. Airline Proprietary Manager Report, at 4.

162. Airline Proprietary Pilot Dep., 6/25/87, at 99-100.

163. Airline Proprietary Manager's Report at 6; Airline Proprietary Pilot Dep., 6/25/87, at 121. According to the Israeli Historical Chronology, the Iranians were displeased with the missiles prior to the departure of the plane, and the Iranian Prime Minister impounded the aircraft, crew, and missiles. According to this account, an Israeli intermediary personally interceded to persuade the Iranians to release the crew and plane. Israeli Historical Chronology.

164. Airline Proprietary Pilot Dep., 6/25/87, at 116. The pilot, believing he probably would be back the next day, ordered a carpet from a rug merchant and arranged to have it put on what he thought would be the next flight. *Id.*, 113-14.

165. *Id.* at 122-23.

166. Airline Proprietary Receipt Records, 11/29/85 and 12/3/85, CIIN 2561 and 2567.

167. Poindexter Test., *Hearings*, 100-8, at 124; Poindexter Notes, 11/25/85, Ex. JMP-19, *Hearings*, 100-8.

168. McMahon Dep., 6/1/87, at 95.

168[a]. *Id.*, at 97-101.

169. *Id.*, at 95-96, 103.

170. North Notebook, 11/25/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

171. Memorandum for the Record, 12/7/85, John N. McMahon, Ex. DRC-12, *Hearings*, 100-11.

172. McMahon Dep., 6/1/87, at 96.

173. Sporkin Test., *Hearings*, 100-6, at 116-19.

174. Group Chief Interview Report, 6/1/87.

175. Dietel Dep., 6/5/87, at 4.

176. CIA air branch subordinate Dep., 6/5/87, at 16, 134-46; CIA air branch Interview Report, 6/1/87.

177. Group Chief Interview Report, 6/1/87.

178. Sporkin Test., Senate Select Committee on Intelligence, 12/3/86, at 9.

179. Dietel Dep., 6/5/87, at 6.

180. Sporkin Test., *Hearings*, 100-6, at 128.

181. Sporkin Test., *Hearings*, 100-6, at 118.

182. CIA air branch subordinate Dep., 6/5/87, at 142-43.

183. Makowka Dep., 5/15/87, at 25-28.

184. Transcription of Sporkin's secretary's shorthand notes of 11/25/85, Ex. SS-1, *Hearings*, 100-6; Sporkin Test., *Hearings*, 100-6, at 13-14.

185. Makowka Dep., 5/15/87, at 31-32.

186. McMahon Memorandum for the Record, Ex. DRC-12, *Hearings*, 100-11.

187. Makowka Dep., 5/15/87, at 33.

188. Finding, undated, CIIN 103.

189. Note for the Director from Stanley Sporkin, 11/26/85, Ex. SS-2, *Hearings*, 100-6.

190. North Notebook, 11/26/85 (misdated 10/26/85) Ex. OLN-47, *Hearings*, 100-7, Part III. North had already heard through Clarridge of McMahon's angry reaction. Just after midnight on November 26, North wrote: "Call from Clarridge—summoned in by Clair [George]/McMahon—'[t]his is criminal.'—Told Agency was 'freight forwarder' by Dewey." North Notebook, 11/26/85 (misdated 10/25/85). Clarridge testified: "I specifically don't remember this telephone call and it [North's note] is inaccurate." Clarridge Test., Hearings, 100-11, at 19.

191. McMahon Dep., 6/1/87, at 122.

192. McMahon Memorandum for the Record, Ex. DRC-12, *Hearings*, 100-11; Memorandum from Casey to Poindexter, 11/26/85, Ex. JMP-18, *Hearings*, 100-8.

193. McMahon Memorandum for the Record, Ex. DRC-12, *Hearings*, 100-11; McMahon Dep., 6/1/87, at 107-08.

194. North Test., *Hearings*, 100-7, Part I, at 66.

195. North Notebook, 11/26/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

196. Israeli Historical Chronology.

197. Allen Dep., 4/21/87, at 168.

198. Ledeen Dep., 3/11/85, at 95.

199. Ledeen Dep., 6/19/87, at 100.

200. Ledeen Dep., 3/11/87, at 86-87.

201. According to the Israeli Historical Chronology, the promises regarding the capability of the missiles were made by Ghorbanifar, not the Israelis.

202. Secord Test., *Hearings*, 100-1, at 83-85.

203. Tower Review Board Report at B-179. On November 25, Iran made a third transfer of $20 million (*Id.*) The purpose of the two $20 million transfers is unclear, but $40 million is the amount which Ghorbanifar had available for proposed weapons purchases in late 1985 and early 1986.

204. Israeli Financial Chronology.

205. Israeli Financial Chronology. On November 20, North reported to Poindexter that "$18M in payment for the first 80 has been deposited in the appropriate account." (North PROF Note to Poindexter, 11/20/85 (21:27:39))

206. Israeli Financial Chronology.

207. North Notebook, 11/20/85, Ex. JMP-84, *Hearings*, 100-8.

208. Israeli Financial Chronology. The $1 million transfer actually preceded the intermediary's receipt of funds from Ghorbanifar.

209. *Id.*

210. *Id.*

211. *Id.*

212. North Notebook, 11/19/85, Ex. OLN-69A, *Hearings*, 100-7, Part III.

213. PROF Note, North to Poindexter, 11/20/85 (21:27:39), Ex. JMP-17, *Hearings*, 100-8.

214. Israeli Financial Chronology.

215. Israeli Financial Chronology. The Israeli intermediary claims that during this same period he paid an additional $700,000 to various other Iranians and $88,752 to defray expenses incurred during the operation. Israeli Financial Chronology.

216. *Id.*

217. Airline Proprietary Project Officer Dep., 6/12/87, at 102-05. The manager of the airline was furious: "I was really upset that I was put in this situation where I risk the clandestine layout of the whole company just for a stupid flight like that." Airline Proprietary Manager Dep., 6/11/87, at 46.

Chapter 11

Clearing Hurdles: The President Approves A New Plan

The difficulties with the November 1985 HAWK shipment and the failure to secure the release of more hostages did not end the arms-to-Iran initiative. Having already traveled down the path of bargaining for the hostages' lives, the President and his NSC staff were reluctant to turn back. North quickly began to plan another arms deal, and the President signed the Finding that Stanley Sporkin prepared immediately after the HAWK shipment. North claimed repeatedly in December that reversing course would cause the radical captors to kill the hostages.

North had another motivation for continuing the arms deals. As he explained to Israeli officials in early December, he wanted to divert profits to benefit the Contras he was supporting in Nicaragua.

In December 1985 and January 1986, the Secretaries of State and Defense argued aggressively to the President against trying to trade arms for hostages. Among other things, they asserted that this initiative was illegal and contrary to longstanding U.S. public policy against providing arms to terrorist states and bargaining with terrorists.

Secretary Weinberger and Secretary Shultz' arguments, together with a first-hand assessment by McFarlane that the Iranian intermediary was the "most despicable man" he had ever encountered, caused the initiative to lose momentum in December. However, in early January the Israelis approached Poindexter—who had replaced McFarlane as National Security Adviser—with a new plan that Poindexter and North quickly embraced. The President decided to go forward. He signed an expanded Finding and directed that the covert activity not be reported to Congress.

Unlike the 1985 transactions, the President decided that the weapons for Iran would now come directly from U.S. stocks. The NSC staff took charge of the initiative, relegating the Israelis to a secondary role. Secord was designated as the agent of the U.S. Government in the future transactions. This created the opportunity to generate profits on the arms sales that the Enterprise could use for its other covert projects—including support of the Contras.

The Players Change

John Poindexter—soon to be elevated to National Security Adviser—and Oliver North met on November 27, 1985, to devise a new plan. Poindexter directed North to have Richard Secord or Israeli official David Kimche deliver a message to soothe the Iranians' feeling of having been cheated because the HAWKs delivered three days earlier did not meet their expectation. North and Poindexter also discussed a "change of team" on the operation. North's notes of the meeting indicate that the United States was prepared to deliver 120 items (probably a new version of HAWKs) in exchange for all the hostages after the first delivery and a commitment by Iran of no future terrorism.[1]

The change in team included removing Michael Ledeen, the NSC terrorism consultant, as an intermediary. When Ledeen gave Poindexter the message that the Iranians felt cheated, Poindexter told him, "We're going to take you off this thing for awhile because we need somebody with more technical expertise."[2] This was the last time Ledeen spoke to Poindexter on the Iran initiative, "since from the time [Poindexter] became National Security Adviser, [Ledeen] was unable to get an appointment with him."[3]

In late November, Secord, Iranian go-between Ghorbanifar, Kimche, and Israeli arms dealers Al Schwimmer and Yaacov Nimrodi met in Paris.[4] According to notes North took when Secord briefed him on the meeting, Ghorbanifar was "angry," apparently because the Iranians wanted "something to deal w[ith] Soviet Recon[naisance]"—such as Phoenix or Harpoon missiles—rather than the HAWKs that were delivered.[5] Ghorbanifar advanced a set of proposals that "blatantly" called for the swapping of arms for hostages.[6] The first proposal, as later related to North by Secord, provided for a phased exchange of 3200 TOW missiles for hostages:

> 600 TOWs = 1 release
> H+ 6 hrs later = 2000 TOWs = 3 release
> H+ 23 hrs = 600 TOWs = 1 release[7]

The other options were variations in which other armaments—such as Maverick air-to-surface missiles, Dragon surface-to-surface missiles, Improved-HAWK missiles, spares for F-4 air planes, ground artillery, and bombs—would be substituted for some or all of the TOWs. Ghorbanifar's proposal also contemplated arms deliveries beyond the initial swap.[8] The Paris group agreed to meet with U.S. representatives in London on December 6 to pursue these proposals.[9]

North Looks for Weapons

During the first few days of December, North had separate meetings with Assistant Secretary of Defense Richard L. Armitage and Israeli Ministry of Defense officials.[10] The purpose of these sessions was to establish liaison between the Pentagon and the Israelis and to identify methods of obtaining weapons to ship to the Iranians or to replenish Israeli stocks following Israeli shipments.[11] One of the Israeli officials met Armitage at the Pentagon on December 2.[12] Armitage testified that he could not recall whether he met with the official or what they discussed.[13] Armitage testified that he warned North of resistance to the plan within the Defense Department, noting that Secretary Weinberger would be "appalled" if he knew North was dealing with Iranians.[14] Nonetheless, after this meeting, Armitage asked Dr. Henry Gaffney, Director of Plans, Defense Security Assistance Agency (DSAA), to prepare a paper on I-HAWKs and I-TOWs and directed Glenn A. Rudd, Deputy Director of DSAA, to prepare a paper on the legal methods for transferring TOW and HAWK missiles to Iran.[15]

Rudd's two-page paper, entitled "Possibility for Leaks," discussed legal methods of selling HAWKs and TOWs to Iran and outlined the inherent risks of Congressional disclosure or discovery by the security assistance community. Rudd concluded there was no way to transfer the weapons, whether directly to Iran or through Israel to Iran, under the Arms Export Control Act without notifying Congress; nor, he said, was there any way to prevent the security assistance community of bureaucrats, diplomats, and arms manufacturers and dealers from learning of the transfers.[16]

When he received Rudd's paper, Armitage instructed Rudd to treat the matter as very confidential and destroy all drafts. Armitage kept the sole copy in his personal office safe.[17] When Armitage briefed Weinberger prior to a December 7, 1985, meeting at the White House, they reviewed "all the arguments that I [Armitage] had laid out, plus the legal arguments which I had mentioned in passing, and that he had absorbed."[18]*

North Lays Out A Plan

On December 4, North wrote a PROF message to Poindexter setting out the current situation and proposing a new arms-for-hostages transaction. He described the "extraordinary distrust" the Iranians developed because Schwimmer and Ledeen had promised that the missiles shipped in November could fly high enough to stop Soviet reconnaissance flights. He said, "None of us [Kimche, Meron, Secord] have any illusions about the cast of characters we are dealing with on the other side. They are a primitive, unsophisticated group who are extraordinarily distrustful of the West in general and the Israelis/U.S. in particular."[19]

While acknowledging "a high degree of risk" in continuing the operation, North emphasized, "we are now so far down the road that stopping what has been started could have even more serious repercussions." He exhorted Poindexter to press on in a way that suggested the United States was already subject to Iranian extortion:

> If we do not at least make one more try at this point, we stand a good chance of condemning some or all [of the hostages] to death and a renewed wave of Islamic Jihad terrorism. While the risks of proceeding are significant, the risks of not trying one last time are even greater.[20]

North outlined the proposal slated for the upcoming meeting in London. He said the "package" would comprise deliveries from Israel of "50 I HAWKs w/ PIP (product improvement package) and 3300 basic TOWs" and reported that the Iranians had already deposited $41 million to pay for these items and that this sum was "now under our control."[21] The schedule that North laid out made plain that this would be an unadulterated swap of arms for hostages:

H-hr: 1 707 w/300 TOWs = 1 AMCIT
H+10hrs: 1 707 (same A/C) w/300 TOWs = 1 AMCIT
H+16hrs: 1 747 w/50 HAWKs & 400 TOWS = 2 AMCITs
H+20hrs: 1 707 w/300 TOWs = 1 AMCIT
H+24hrs: 1 747 w/2000 TOWs = French Hostage[22]

As it had been previously, the schedule was set up so that the Americans had to deliver weapons before the Iranians would produce any hostages.

North also reported to Poindexter that "replenishing Israeli stocks" is "probably the most delicate issue." He proposed that the Israelis purchase replacements with cash, rather than with Foreign Military Sales credits. However, he ignored the legal question about third-country transfers under the Arms Export Control Act. Lastly, North told Poindexter that be-

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*Weinberger did not recall such a meeting, but did not dispute that it had occurred. Weinberger Test., *Hearings*, 100-10, at 97. In any event, at the White House meeting on December 7, he was well-prepared to attack the plan on a variety of legal and policy grounds.

sides themselves, only National Security Adviser Robert McFarlane and Duane Clarridge of the CIA had a complete understanding of the full plan.[23] Clarridge has denied that he and North discussed this plan, and said that the appearance of his name in North's PROF message is probably due to North's "tendency to use my name with McFarlane and Poindexter because if I said it was a good idea, then they tended to think it was a good idea."[24]

The following day, North put the proposal into an unsigned, unaddressed memorandum. This memorandum made clear that all 3,300 TOWs and all 50 Improved HAWK missiles would come from Israel's "prepositioned war reserve."[25] North's memorandum proposed not only that Congress not be notified about the operation and replenishment, but also that there be a cover story to explain why Israel needed to buy weapons:

> The Israelis have identified a means of transferring the Iranian provided funds to an Israeli Defense Force (IDF) account, which will be used for purchasing items not necessarily covered by FMS. They will have to purchase the replenishment items from the U.S. in FMS transaction from U.S. stocks. Both the number of weapons and the size of the cash transfer could draw attention. If a single transaction is more than $14.9 M, we would normally have to notify Congress. *The Israelis are prepared to justify the large quantity and urgency based on damage caused to the equipment in storage.*[26]

Although the Finding CIA Counsel Stanley Sporkin drafted in November contemplated *delayed* Congressional notification, North's proposal represented an entirely different approach: structuring the transaction so as to evade Congressional reporting altogether.

As North was putting together his plan for a new arms-for-hostages deal, the CIA stood by to provide support for more flights into Iran. In the days after the HAWK shipment, Clarridge and CIA stations in Countries 16 and 18 exchanged numerous cables relating to clearances for anticipated flights from Israel to Iran transiting at Country 18 and overflying Country 16.[27] On November 27, Clarridge told the stations that the "operation is still on but we have encountered delays" and that "whatever was supposed to happen after the first sortie did not happen and we are regrouping."[28] On December 3, he reported to them: "We are still regrouping. Key meetings of principals will take place this weekend with earliest possible aircraft deployments sometime mid to late week of December 8."[29] Clarridge left the United States on other business in early December. However, before leaving he told his deputy to expect another flight to Iran on a project being run by the NSC for which the CIA would be asked to obtain clearances.[30] (For an organizational chart of the CIA in 1985, see Figure 11-1.)

The President Signs a Finding

McFarlane returned to his office on December 3 for the first time after the Geneva summit. He had already told the President of his decision to resign, and he tendered his resignation the following day.[31] On December 3 and 4, McFarlane had several lengthy meetings with Poindexter. However, he does not recall any discussion of the status of the covert action Finding[32]—which CIA Director William Casey had delivered to Poindexter with a recommendation that the President sign it and about which McMahon had been anxiously pestering Poindexter for days.[33]

On December 5, in one of his first acts as National Security Adviser, Poindexter presented the Finding to the President at his daily national security briefing. The President signed it.[34] Poindexter's notes of his daily briefing of the President refer to the Finding.[35] Chief of Staff Donald Regan was present at this briefing, but testified that he has no recollection of the Finding or the President's signing it:

> I have racked my brains since I've read about it in the press, that you have had testimony to that effect. I've checked with my members of the staff, the White House staff who were working with me at the time, as to whether they remember it. No one can remember seeing that document.[36]

Poindexter testified that he was never happy with the Finding because it failed to mention any objectives other than trading arms for hostages. He said he submitted it to the President without the staffing and review that normally accompanies a Finding. In fact, other than Casey and McMahon—who both urged that the Finding be signed—Poindexter did not recall discussing it with anyone else.[37]*

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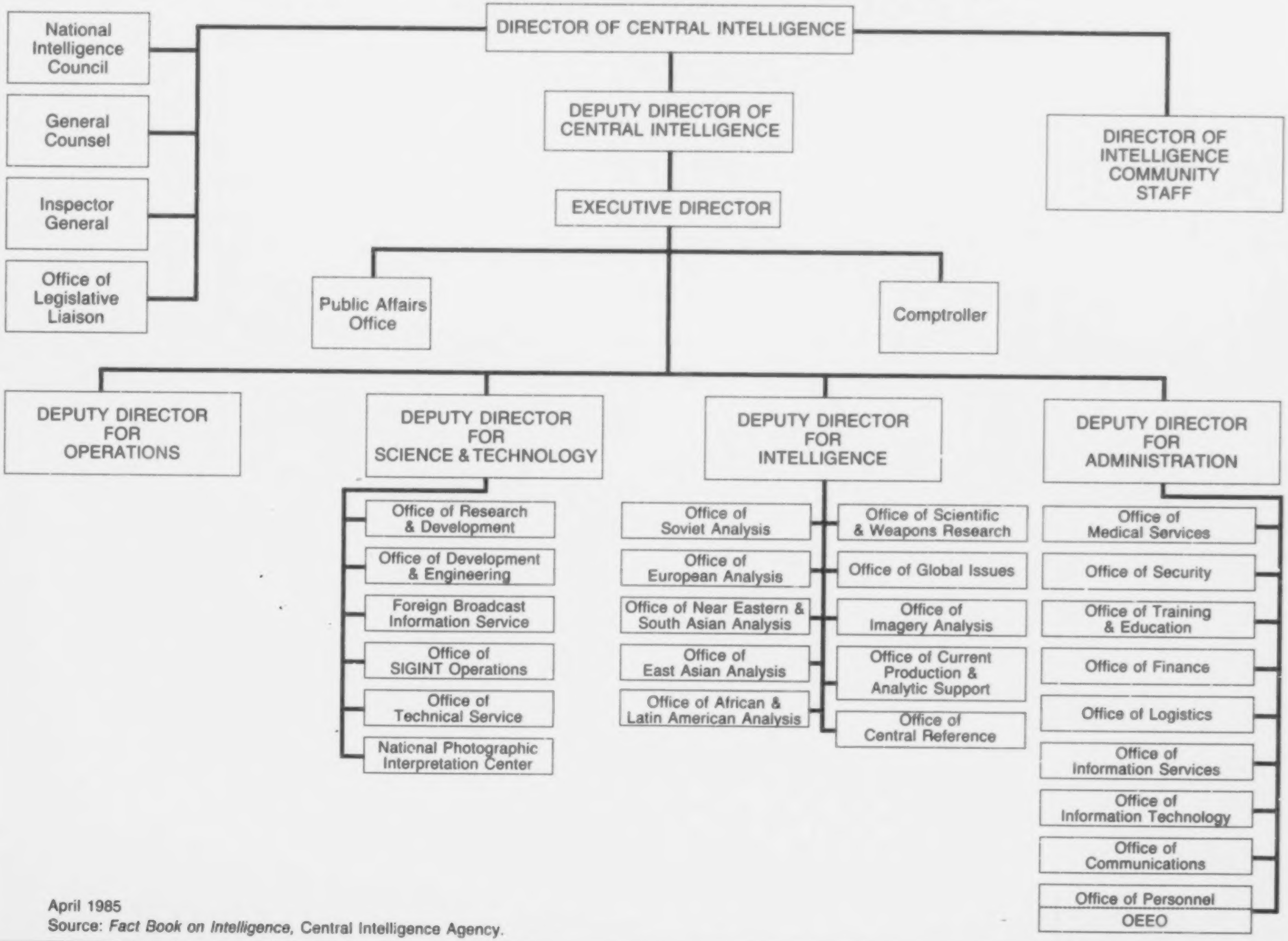
*McMahon recalled that Sporkin told him he was going to consult with the Department of Justice and the White House counsel before finalizing the Finding. (McMahon Dep., 9/2/87, at 52) North testified that he believed that Meese had "seen and approved" this Finding before it was signed. However, he based this not on personal knowledge but on his understanding that "[a]ll Findings are reviewed by the Attorney General." (North Test., *Hearings*, 100-7, Part I, at 71-72) Both Poindexter and Meese testified that Meese was not consulted. (Poindexter Test., *Hearings*, 100-8, at 125; Meese Test., *Hearings*, 100-9, at 8-9).

Figure 11-1. Organization Chart of the Central Intelligence Agency.


DIRECTOR OF CENTRAL INTELLIGENCE
National Intelligence Council
General Counsel
Inspector General
Office of Legislative Liaison
DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE
DIRECTOR OF INTELLIGENCE COMMUNITY STAFF
EXECUTIVE DIRECTOR
Public Affairs Office
Comptroller
DEPUTY DIRECTOR FOR OPERATIONS
DEPUTY DIRECTOR FOR SCIENCE & TECHNOLOGY
Office of Research & Development
Office of Development & Engineering
Foreign Broadcast Information Service
Office of SIGINT Operations
Office of Technical Service
National Photographic Interpretation Center
DEPUTY DIRECTOR FOR INTELLIGENCE
Office of Soviet Analysis
Office of European Analysis
Office of Near Eastern & South Asian Analysis
Office of East Asian Analysis
Office of African & Latin American Analysis
Office of Scientific & Weapons Research
Office of Global Issues
Office of Imagery Analysis
Office of Current Production & Analytic Support
Office of Central Reference
DEPUTY DIRECTOR FOR ADMINISTRATION
Office of Medical Services
Office of Security
Office of Training & Education
Office of Finance
Office of Logistics
Office of Information Services
Office of Information Technology
Office of Communications
Office of Personnel
OEEO

April 1985
Source: *Fact Book on Intelligence*, Central Intelligence Agency.

Poindexter testified that, to him, the primary significance of the Finding was its retroactivity—a feature that was highly unusual, if not unique.* He said, "There really wasn't a forward-looking aspect to the Finding."[38] However, at the time that the Finding was signed, Poindexter was considering the detailed plan that North had presented for further arms sales, and this was the subject of a meeting two days later with the NSC principals.

The original of the signed Finding was kept in Paul Thompson's safe at the NSC.[39] Contrary to normal practice, the CIA and other agencies were not given a copy. Indeed, no copies were made. McMahon said that he knew of no other occasion when this occurred.[40]

When the Iran initiative was unraveling almost a year later, Poindexter destroyed this Finding. He believed that if the Finding came to light it would cause "significant political embarrassment" to the President because it would reinforce the emerging picture that the United States had traded arms for hostages.[41] In addition, the Finding was evidence of the Administration's contemporaneous knowledge of the HAWK shipment, a fact that Poindexter, Casey, North, and others sought to conceal in November 1986.

Poindexter Briefs Shultz

The same day the President signed the Finding, Poindexter briefed Secretary of State George Shultz by telephone on the status of the Iran initiative. The briefing—Shultz's first from Poindexter on the subject—was not complete: Poindexter did not even mention the Finding. Not knowing he was hearing only part of the story, Shultz commented at the time to an aide, "he [Poindexter] told me more than I had known before of what went on in the latter half of 1985 and I felt this was a good thing and we were off to a good start."[42] Shultz told Poindexter that the Iran initiative was a "very bad idea"[43] and that "[w]e are signaling to Iran that they can kidnap people for profit."[44]

That same day, December 5, CIA Deputy Director John McMahon convened a meeting with several top CIA officials, including Robert Gates, Edward Juchniewicz, and Chief of the Near East Division (C/NE). McMahon said that a meeting with the President was slated for the weekend to "take stock" of U.S. efforts to free hostages and expand ties with Iran. He requested that various facts relating to Iran's military strength and the status of the Iran-Iraq war be pulled together. Someone at the meeting reviewed what had already happened, including the November 24 shipment and the preparation and signing of the Finding, and the planning for more shipments, including North's chartering of planes and his upcoming trip to London for more talks.[45]

North Raises Contra Diversion with Israelis

On the day after the President signed the Finding, December 6, North remarked during a meeting with Israeli officials that the United States wanted to use profits from the upcoming arms sale to Iran to fund U.S. activity in Nicaragua. The meeting, which was held in New York, concerned replenishment of Israeli TOWs. One of the Israeli officials made handwritten notes of this meeting on December 12, 1985. According to these notes, the Israelis were told by North that not only did the United States have no budget to pay for the 504 TOW missiles (and planned on the Israeli Government's receiving this money from the Israeli intermediaries), but that in the future the United States wanted to generate profits from this transaction in order to finance part of its activity in Nicaragua. According to the Israeli Historical Chronology, North had a position paper with him at the meeting that he said was to be presented to the President at a meeting the following day.[46]**

North testified that he recalled no such conversation, though he could not rule it out:

> My recollection was that the first time it [the diversion] was specifically addressed was during a [later] meeting with Ghorbanifar. It may well have come up before, but I don't recall it.[47]

North testified that his "clearest recollection" was that the notion of using the residuals for the Contras was first suggested by Ghorbanifar in January 1986.[48]

North flew from New York to London on December 6 and met with Secord, Ghorbanifar, Kimche, Schwimmer, and Nimrodi to discuss the 50-HAWK, 3,300-TOW proposal that North had previously presented to Poindexter.[49] Ghorbanifar acknowledged that the Iranians were having increasing difficulty maintaining control over the Hizballah captors and pressed vigorously for a quick renewal of arms shipments.[50]

The President and His Advisers Review the Initiative

While North was moving full-steam ahead in the negotiations, the President and his top national security advisers debated the Iranian initiative at an informal meeting on the morning of Saturday, December 7, in the White House residence. Present were the President, Secretaries Shultz and Weinberger, McMahon (sitting in for Casey, who was out of town), McFarlane, Poindexter, and Regan.[51] According to McFarlane, the purpose of the meeting was "to review what has taken place since the President's approval of August and the negative viewpoints of the Secretaries of State and Defense to the effect that we hadn't achieved our purpose, and [that the initiative] was degenerating into an arms for hostage arrangement."[52] The discussion that ensued "was now more specific than it had been in August, and it was about a specific plan" to trade weapons for hostages.[53]

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* Poindexter testified that he could recall only "one or possibly two other findings that had a retroactive nature to them. I, frankly, was always uncomfortable with that, because I thought it didn't particulary make a lot of sense." (Poindexter Test., *Hearings*, 100-8 at 18) In Executive Session, Poindexter testified that after further thought, he could not recall any other retroactive Findings. (Poindexter Test., Executive Session, 8/6/87, at p. 8).

** Two of the Israeli officials at the December 6 meeting, who did not take notes, did not recall the remarks of North recorded by the other Israeli official in his notes. Israeli Historical Chronology.

Secretary Shultz, Secretary Weinberger, and Regan all voiced strong opposition to the initiative. Secretary Shultz advanced multiple policy reasons for not pursuing it. His "talking points" for the session stated that the initiative would "negate the whole policy" of not making "deals with terrorists"; that he doubted it would buy the United States influence with moderates in Iran; that it would undoubtedly become public and "badly shake[]" moderate Arabs when they learned that the United States was "breaking our commitment to them and helping the radicals in Tehran fight their fellow Arab Iraq"; and that U.S. allies would be "shocked if they knew we were helping Iran in spite of our protestations to the contrary."[54]

Secretary Weinberger also forcefully voiced opposition, including on legal grounds. He said the proposed arms deal would violate both the U.S. embargo against the shipment of arms to Iran and the restrictions on third-country transfers of U.S.-provided arms in the Arms Export Control Act. He later testified: "[T]here was no way in which this kind of a transfer could be made if that particular Act governed."[55]

Secretary Weinberger also pressed many of the arguments made by the Secretary of State:

> I ran through a whole group [of specific objections] and raised every point that occurred to me, including the fact that we were at the same time asking other countries not to make sales of weapons to Iran, that there was no one of any reliability or, indeed, any sense with whom we could deal in Iran and the government, and that we would not have any bargain carried out, that if we were trying to help get hostages released, why there would be a real worry that the matter would not be held in any way confidential, that we would be subjected to blackmail, so to speak, by people who did know it in Iran and elsewhere, and that we had no interest whatsoever in helping Iran in any military way, even a minor way, and that in every way it was a policy that we should not engage in and most likely would not be successful.[56]

Secretary Weinberger told the President that the initiative "wouldn't accomplish anything, and that they [the Iranians] would undoubtedly continue to milk us."[57] McMahon argued that the long-range rationale of the arms transactions—to bring about a more moderate regime in Iran—was unfounded.

> I said that I was unaware of any moderates in Iran, that most of the moderates had been slaughtered by Khomeini, that whatever arms we give to these so-called moderates they will end up supporting the present Khomeini regime and they would go to the front and be used against the Iraqis and that would be bad.[58]

McMahon "was convinced that all of this was an arms for hostage arrangement, no matter what you called it. . . ."[59] There is evidence that McMahon also argued that Ghorbanifar was unreliable.[60]

The President, along with McFarlane and Poindexter, spoke in favor of continuing the initiative.[61]* According to Secretary Shultz:

> The President, I felt, was somewhat on the fence but rather annoyed at me and Secretary Weinberger because I felt that he sort of—he was very concerned about the hostages, as well as very much interested in the Iran Initiative.[62]

Secretary Shultz testified that the President was "fully engaged" in the conversation and frustrated with the situation.[63]

In response to Weinberger's legal objections, Shultz recalls that the President responded: " 'Well, the American people will never forgive me if I fail to get these hostages out over this legal question,' or something like that." Weinberger replied: " '[B]ut visiting hours are Thursday', or some such statement."[64]**

The participants left the meeting with different views about whether the initiative would proceed. According to Poindexter, the President wanted to pursue every means of trying to get the hostages back.[65] But McFarlane recalled that the President, with disappointment and frustration, approved the position of no more arms sales to Iran, at least pending the London meeting.[66] McMahon said that no decision was made, and that the President left the meeting to do his Saturday afternoon radio broadcast, telling his advisers to "talk more on this and see what ought to be done."[67] Secretary Weinberger testified that he believed the initiative had been put to rest once and for all. Indeed, he returned to the Pentagon after the

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*Casey was also in favor of continuing the initiative at this point, according to Poindexter. Poindexter Test., *Hearings*, 100–8, at 25.

**Shultz testified that this "banter" between the President and Secretary Weinberger did not have the tone of the President advocating violating the law, but rather "was the kind of statement that I am sure we all make sometimes when we are frustrated." Shultz Test., *Hearings*, 100–9, at 32.

meeting and told his military aide that "this baby had been strangled in its cradle, that it was finished."[68] And Secretary Shultz "wasn't sure" where things stood after the meeting, but believed that he and Secretary Weinberger had prevailed.[69]

A striking aspect of the December 7 meeting was what was not discussed: According to McMahon and Weinberger, neither the November shipment of HAWK missiles, nor the Finding that was signed just two days earlier, came up.[70]

Despite varying impressions of the meeting, the President directed McFarlane to go to London to meet with Ghorbanifar and others. Poindexter testified that the purpose was to "check out" the Israeli channel to Iran so that the President could have first-hand information on which to base a decision.[71]* McFarlane testified that his purpose was to stress to Ghorbanifar that the United States was open to political discourse with Iran but no arms sales.[72] But there is evidence of a more specific purpose: McFarlane was to try to talk Ghorbanifar into arranging a release of the hostages outside the framework of an arms deal, or at least before any more arms deliveries.[73] Poindexter proposed at one point during the meeting that McFarlane also have authority, if the Iranians rejected this approach, to inquire whether the British Government would perform the replenishment sales to Israel that Weinberger had argued the United States could not make.[74] There is no evidence that such an approach was made.

McFarlane Meets Ghorbanifar in London

On December 8, McFarlane joined Kimche, Secord, North, Nimrodi, and Ghorbanifar in London.[75] McFarlane presented an agenda that focused on a political opening with Iran and on areas of possible common interests between the United States and Iran. In contrast, Ghorbanifar wanted to talk only about specified numbers of TOW missiles for each hostage.[76] Ghorbanifar explained that the Iranians were very angry over receiving the wrong kind of HAWK missiles. McFarlane responded: "[G]o pound sand, that is too bad."[77] McFarlane was "revolted" by the bargaining and found Ghorbanifar to be a "borderline moron."[78]

North's view of the meeting was slightly different. He thought McFarlane was telling Ghorbanifar that there could be no more arms sales until after the hostages were released, not that McFarlane was precluding arms sales.[79] Once again, as the initiative began to come apart, North raised the specter of the death of the hostages in retaliation for a U.S. decision to break off the negotiations. In a memorandum to McFarlane and Poindexter, he wrote: "[A]ll it would take for the hostages to be killed is for Tehran to 'stop saying no' [to the captors]."[80]

McFarlane, North, and Secord flew back to Washington together on December 9. On the way back, McFarlane said he was very unhappy with Ghorbanifar's arms-for-hostages pitch. He viewed Ghorbanifar as a businessman interested only in profit and "one of the most despicable characters he had ever met."[81]

North was unhappy with McFarlane's negative reaction[82] and that day wrote an "eyes only" memorandum to McFarlane and Poindexter entitled "Next Steps." In it, North reviewed options that he saw as necessary "[i]f we are to prevent the death or more of the hostages in the near future."[83] After reviewing the problems of Ghorbanifar's untrustworthiness, Schwimmer's arrangement of previous deals that angered the Iranians and left Israel with inadequate funds for replenishment, and the United States' "lack of operational control over transactions with Ghorbanifar," North initially set out four options: the arms-for-hostage swap discussed in London, an Israeli delivery of 400 to 500 TOWs to Iran to restore "good faith," a military raid, and "do nothing." North summarily rejected the "do nothing" approach:

> Very dangerous since *U.S. has, in fact, pursued earlier Presidential decision* to play along with Gorbanifahr's plan. U.S. reversal now in mid-stream could ignite Iranian fire—hostages would be our minimum losses.[84]

North testified that Casey shared his view that terminating the negotiations would lead to the death of the hostages.[85]

At the end of the memo, North described a "fifth option": the United States would directly sell arms to Iran, acting pursuant to a Presidential Finding and using Secord as an operational "conduit."[86] The Iran initiative was restructured over the next few weeks to closely resemble this "fifth option." Moreover, using the Enterprise as a conduit for the arms sales proceeds facilitated the diversion of funds to the Contras that North had mentioned to the Israelis only a few days earlier.**

McFarlane Briefs the President on the London Meeting

On December 10, McFarlane briefed the President on the London meeting. Also present were Casey,

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*In fact, the United States already had substantial first-hand information on Ghorbanifar from both CIA officials and Ledeen.

**On the same day that North prepared this "Next Steps" memorandum, he also met with the General Counsel of the CIA, Stanley Sporkin. (North Calendar, 12/9/85, N336) Sporkin recalls that McMahon was to attend this meeting as well and that the purpose was to discuss McMahon's desire that the CIA's role in the Iran initiative be eliminated or reduced. Sporkin Test., *Hearings*, 100-6, at 127-128.

Poindexter, North, and Regan.[87]* McFarlane emphasized that Ghorbanifar lacked integrity and that the initiative was unlikely to bear fruit if he remained the channel to the Iranians.[88] At the same time, McFarlane or North said that abandoning the initiative would risk the lives of the hostages.[89] The President seemed influenced by this concern.[90]

No decision was reached about the future of the initiative, and again there were differing perceptions about what would happen. The President continued to hope that its continuation might lead to freedom for the hostages. McFarlane recalled that the President asked,

> [W]hy couldn't we continue to let Israel manage this program, and was expressing and searching for, I think understandably, ways to keep alive the hope for getting the hostages back, and it is quite true that the President was profoundly concerned for the hostages.[91]

Casey left the meeting with "the idea that the President had not entirely given up on encouraging the Israelis to carry on with the Iranians."[92]

> I suspect he would be willing to run the risk and take the heat in the future if this will lead to springing the hostages. It appears that Bud [McFarlane] has the action.[93]

Poindexter testified that the President was disappointed that Ghorbanifar appeared to be so unreliable, but was reluctant to abandon the project.[94] In contrast, State Department officials were left with the impression that the initiative was dead. Under Secretary of State Michael Armacost reported to Shultz, who was in Europe, that "Bud's recommendation, upon returning from his latest discussions, was to drop the enterprise. That has now been agreed."[95]

Late that evening, Clarridge's deputy, who was the acting Chief of the CIA's European Division in Clarridge's absence, cabled CIA stations in Countries 16 and 18 to inform them that there would be no more flights, at least in the short run. He wrote:

> As late as last night the negotiating was still going on. We have just received word now that the deal is apparently all off. Don't know why yet or whether there is a possibility that it will revive in the future. . . . [F]or now it looks like we are standing down.[96]

Poindexter to North: Keep Trying

Following the briefing, Poindexter had the clear impression that the President wanted to continue the program, and he moved to put it "on a sounder footing."[97] Casey too was "a very strong advocate of proceeding."[98] Poindexter told North to continue his efforts to keep the Iran initiative moving forward.[99] This involved at least three steps: first, preparing a fully staffed and more comprehensive covert action Finding; second, substituting a new team—to be lead by North and Israeli Amiram Nir—to replace Ledeen, Schwimmer, and Nimrodi; and third, finding a legal way to sell arms to Iran. On this last point, Poindexter asked North to work with "the appropriate people at CIA and in [Attorney General] Ed Meese's office, if not Ed Meese himself."[100]

The CIA Evaluates Ghorbanifar

Ledeen, with North's approval, aggressively urged the CIA to establish an intelligence relationship with Ghorbanifar. In early December, Ledeen met with the CIA's Duane Clarridge and Charles Allen. He told Allen the history of the Iran initiative, including the HAWK missile debacle. He then explained why he believed Ghorbanifar had contacts that could help the CIA gain insights into the Iranian regime and assist its counterterrorism efforts. Ledeen said Ghorbanifar was "a good fellow who is a lot of fun" and "praised [him] to the hilt."[101]** Allen passed the information to the CIA's Near East Division for evaluation.[102]

After meeting with Ghorbanifar in mid-December in Switzerland, Ledeen met with Casey on December 19 and repeated his arguments for dealing with the Iranian. Casey reacted favorably but indicated a need to clear up the controversy over Ghorbanifar's poor record with the CIA.[103]

Casey called Deputy Director for Operations Clair George and instructed him to arrange a new evaluation of Ghorbanifar.[104] On December 22, the Chief of the Iran branch at the CIA interviewed Ghorbanifar at Ledeen's home. Ledeen and Allen were there and North showed up near the end. Ledeen told the Chief of the Iran branch that Ghorbanifar is "a wonderful man . . . almost too good to be true." The conversation focused on terrorism and leading personalities in Iran.[105]

The Chief of the Iran branch reported to his CIA superiors that he was "only further convinced of the untruthfulness or lack of trust that we could put in Mr. Ghorbanifar." They decided that Ghorbanifar should be given a polygraph test, and Ghorbanifar agreed.[106] After hearing the briefing on Ghorbanifar, Casey sent the President an "eyes only" letter stating that one of the ongoing initiatives to free the hostages was a plan involving Ghorbanifar. Casey wrote of

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*Some of the participants place Weinberger at this meeting, but he has no recollection of it.

**At this time, Ledeen also outlined Ghorbanifar's proposal for an anti-Libyan "sting" operation in which the assassination of a leading opponent of Qadhafi would be staged and later revealed to be faked. Ledeen Dep., 6/22/87, at 167, 172–74.

Ghorbanifar: "He has 3 or 4 scenarios he would like to play out."[107]

The decision to consider continued reliance on Ghorbanifar was remarkable. Previously, Agency officials had found his information so marked by deceit, lies, and self-serving proclamations that it had issued a "burn notice" warning the U.S. intelligence community that he could not be trusted and should not be dealt with.[108] Moreover, the information Ghorbanifar was providing was almost impossible to corroborate. He alone was explaining the Iranian position on the hostage issue. The last deal he had helped arrange, the November HAWK shipment, had been a complete disaster.

Acceleration of the Initiative: January 1986

Israelis Add a New Element to the Negotiations: The Southern Lebanon Army Prisoners

In mid-December, 1985, Amiram Nir, adviser to the Prime Minister of Israel, became involved in the Iran operation; he later became the liaison to the Americans and Ghorbanifar. Nir, who reportedly was unaware of the secret Iranian arms deals prior to this time, had spent the last month exploring whether American hostages in Lebanon would be released if the Southern Lebanon Army freed Shiite prisoners. Nir proposed to his superiors that he discreetly get the reaction of the Americans to a hostage release initiative along these lines.[109]

After being briefed on the U.S.-Israeli Iran operation, Nir began work on a plan linking that operation with his own plan. He presented to high-ranking Israeli officials a proposal that included: (1) a direct sale of TOWs out of Israeli arsenals to Iran and the simultaneous release of American hostages; (2) a purchase by Israel from the United States of replacement arms, using the proceeds from the Iran sale; (3) exerting Israeli influence to obtain the release of prisoners held by the Southern Lebanon Army; (4) the handling of all logistics by the Israelis to enable the Americans to deny any involvement; and (5) the construction of a convincing cover story to explain the release of the hostages and the prisoners.[110] Nir then went to London in late December to meet, for the first time, with Ghorbanifar and one of the Israeli intermediaries. The three hammered out a detailed—but tentative—plan embodying these elements. The Israeli Government authorized Nir to present this plan to the United States but made clear that the transaction could occur only with U.S. agreement to the entire concept and that Israel would assist in whatever way the Americans requested, but not play a leading role.[111]

Nir Comes to Washington

On January 2, 1986, Nir flew to Washington to meet with Poindexter and North at the request of Prime Minister Peres.[112] In an opening meeting with North in a hotel, Nir said that he had an idea about how to improve the progress of the Iranian operation.[113] Nir met later that morning with Poindexter, North, and Don Fortier, Poindexter's deputy, and laid out his plan.[114] The central features of the proposal were recorded by Poindexter in his notes: the Israelis would ship to Iran 4,000 "unimproved TOWs"; after the delivery of the first 500, all five American hostages would be released; simultaneously the Southern Lebanon Army would release "20-30 Hizballah prisoners who don't have blood on their hands."[115] If the American hostages were released, Israel would ship to Iran the other 3,500 TOWs and Iran would "confirm" its agreement for "no more hostages [and] terror."[116] Under the plan, the United States would replace the TOWs only if the hostages were released. If the hostages were not released, replenishment was not required and Israel would have lost 500 TOWs. If they were freed, then the United States would replace the 4,000 TOWs, plus the 500 TOWs the Israelis had shipped in 1985.[117]

Rapid replacement of the TOWs was of particular concern to Nir. He emphasized that the number of TOWs would decrease Israel's arsenal when tension with Syria increased the urgency to keep Israel's arsenal at full strength. To address Israel's concerns about readiness, Nir called for the United States to "preposition" substitute TOWs near Israel as soon as possible in case a sudden need for them occurred. Thereafter, the United States was to proceed with "regular steady replacement" of the TOWs by sale to Israel. The Israelis also wanted a U.S. commitment that, if the operation were exposed, the United States would say it knew of the operation and did not object.[118]

Nir and North Discuss Use of Residuals

Nir's proposal included another feature: generating profits that could be diverted to other covert projects. This was not a new concept: Nir and North had talked generally about joint covert operations in November, and North had told other Israelis in December that the United States wanted to use profits from the arms sale under discussion at that time to finance U.S. activities in Nicaragua.

Poindexter recalled that at either the January 2 meeting or another meeting with Nir a few days later, "[t]here also was a very brief, general discussion about some other cooperative activities."[119] North—who talked alone with Nir several times during the first days of January—testified to a more specific discussion about uses for the "residuals":

> I recall that we met New Year's day or the day after . . . and it was his [Nir's] proposal at that point to use the profits by the arrangement they envisioned, selling Israeli TOWs at a profit, replenishing them with part of that money, using part of that money for other operations. . . . I do not believe he mentioned contras at that meeting, but my recollection is we began to talk in early January about other joint U.S.-Israeli, and in some cases unilateral Israeli operations of a certain kind . . . .[120]

A New Finding Is Prepared

Poindexter realized from the start that if the United States embraced the Nir proposal for revitalizing the Iranian initiative, a new covert action Finding would be essential. In notes that he wrote on a flight to join the President in California immediately after the January 2 meeting he jotted: "Covert Finding—already pregnant for 500."[121] Poindexter testified that the "500" was a reference to the TOWs that Israel had already shipped to Iran with U.S. approval but without a Finding.[122]

On the same day that Nir advanced his new proposal, North contacted Sporkin to set in motion the drafting of a new covert action Finding to authorize the activity. North told Sporkin he wanted a more expansive Finding than the one Sporkin prepared in November. He said it should "cover certain other activities, that there was a broader concept to the relationship that was being considered with Iran."[123]

A first draft of the new Finding, prepared by a CIA staff lawyer who was told nothing of the November Finding,[124] did not mention the objective of gaining the release of American hostages. It did authorize shipment of arms to Iran. This draft included the standard provision calling for the Director of Central Intelligence to report the activity to the Intelligence Committees of Congress.[125]

On January 3, Sporkin edited the draft Finding, making several significant changes. First, he put the provision calling for Congressional notification in brackets, and above it inserted new language directing that the Director instead "refrain from reporting . . . until I [the President] otherwise direct." Sporkin made this change to present squarely to the President the alternatives on notification. Sporkin also changed the description section of the Finding. He apparently sent this draft to North during the day on January 3.[126] The draft contained no references to hostages.

North asked Sporkin to meet with him that night to work on the Finding. Before agreeing to this, Sporkin tracked down Casey—who was vacationing in Florida—and asked if he should do so. Casey told Sporkin that he knew nothing about what was going on, but that Sporkin should meet North and keep Casey informed.[127]

At the meeting, North showed Sporkin another draft of the Finding.[128] The preamble of the North draft included only the nonnotification alternative, a modification that Poindexter, and—North assumed—the President, approved.[129] Among other changes were inclusion of a reference to "third parties" and a reference to "USG" (U.S. Government)—rather than just the CIA—as the entity authorized by the Finding to act.[130] Sporkin understood "third parties" to refer "to the people that were working with Iran, Ghorbanifar," as well as the Israelis who, Sporkin learned, were involved in the initiative in November.[131] The North draft, like the Sporkin draft, contained no reference to the central quid pro quo for the arms sales—the hostages.

Later that evening or the following day, North called Casey, and Casey's reaction to the renewed initiative was positive. North then reported to Poindexter that Casey "thought the Finding was good and that this is probably the only approach that will work."[132]

The next day, North drafted a cover memorandum for Poindexter to send to the President with the Finding. North wrote that Nir had proposed a plan "by which the U.S. and Israel can act in concert to bring about a more moderate government in Iran." He said that under the plan, this goal was to be achieved by providing "military materiel, expertise and intelligence" to "Western-oriented Iranian factions." Providing such items to moderates would enable them to come to power by "demonstrat[ing] their credibility in defending Iran against Iraq and in deterring Soviet intervention," North said.[133]

North's draft cover memorandum described the role to be played by the United States under the plan:

> As described by the Prime Minister's emissary [Nir], the only requirement the Israelis have is an assurance that they will be allowed to purchase U.S. replenishments for the stocks that they sell to Iran. Since the Israeli sales are technically a violation of our Arms Export Control Act embargo for Iran, a Presidential Covert Action Finding is required in order for us to allow the Israeli sales to proceed and for our subsequent replenishment sales.[134]

North's memorandum thus makes plain that he understood that, without a Finding, the sale of U.S.-made weapons by Israel to Iran would violate the Arms Export Control Act.

The memorandum also stated that if the plan were approved and the Finding signed, Israel would "unilaterally" commence delivery of TOW missiles to Iran in January, the United States would replenish Israeli stocks in less than 30 days, and five American hostages in Beirut would be released.[135] The memorandum made no reference to Nir's proposal regarding release of dozens of prisoners held by the Southern Lebanon Army, nor to the plan to use profits for other covert operations.

On Sunday, January 5, North, Sporkin, and Casey met at Casey's home to discuss the new plan and the draft Finding. Casey read the draft Finding along with a draft cover memorandum and voiced his approval.[136] Sporkin, however, felt uncomfortable about omitting the hostage release objective from the Finding and raised this concern with Casey. According to Sporkin, North explained to Casey that the State Department did not want this in the Finding because it would create an appearance of a "hostage-for-arms shipment" and therefore would not "look right."* Sporkin argued that the hostage release aspect of the Finding was a "very important element" that "ought to be in there." Casey agreed.[137]

Apparently around this time, North also revised the cover memorandum to the President. He deleted the statement that the contemplated Israeli sales were a "technical violation" of the Arms Export Control Act and included a sentence expressly recommending that "you exercise your constitutional p[r]erogative to withhold notification of the Finding to the Congressional oversight committees until such time that you deem it to be appropriate."[138]

On Monday, January 6, North hand-carried the draft Finding and cover memorandum to Attorney General Meese for his review. North discussed it with the Attorney General and his deputy, D. Lowell Jensen. Attorney General Meese approved the Finding and the "procedures we were using," according to North.[139] Attorney General Meese does not recall the meeting, but is "satisfied that it took place."[140] Jensen testified that North presented the papers for "informational" purposes only, and that the Attorney General was not asked for, and did not offer, any opinion.[141]

The President and Advisers Consider the New Proposal

At the morning national security briefing on January 6, Poindexter told the President of the Nir proposal.[142] The Vice President, Regan, and Don Fortier were also present.[143] The President "indicat[ed] he was in general agreement" with the proposal and decided there would be a full NSC meeting the following day on the proposal and the Finding. Poindexter presented the President with the January 6 draft of the Finding at this briefing. Poindexter did not intend that it be signed at this point because it had not yet been "fully staffed" and discussed among the President's national security advisers. But the President, not realizing that the Finding was only a proposal for discussion, read it and signed it, reflecting his agreement.[144]

At the full NSC meeting on January 7 were the President, the Vice President, Secretaries Shultz and Weinberger, Attorney General Meese, Casey, Poindexter, and Regan.[145] While Secretaries Weinberger and Shultz continued to object strenuously, all others favored the plan or were neutral.[146] Secretary Weinberger, who said he had no advance knowledge about the subject, found it to be "very much a re-run" of the December meeting, except that now the President decided to go forward with the plan:

> I made the same points, George Shultz made the same points. Bill Casey felt that there would be an intelligence gain, and there was also talk of the hostages as one of the motivating factors, . . . but the responses of the President seemed to me to indicate he had changed his view and had now decided he wanted to do this.[147]

There is no record that the Vice President expressed any views.

At the meeting, Attorney General Meese provided a legal opinion that the arms sales could be done legally with Israel making the sales and the United States replenishing Israel's stocks.[148] Secretary Weinberger again objected that the proposed transaction would violate the Arms Export Control Act; the Attorney General responded that there were mechanisms outside the AECA through which the operation could proceed legally, including "the President's inherent powers as Commander in Chief, the President's ability to conduct foreign policy. . . ."[149] Meese referred to a 1981 written legal opinion by Attorney General William French Smith stating that the CIA could legally sell to third countries weapons obtained from the Defense Department under the Economy Act. On this authority, he "concurred with the view of Director Casey that it would be legal for the President to authorize arms transfers pursuant to the National Security Act."[150]

Secretary Shultz felt that it was very clear that the President wanted to go forward with the plan. To the Secretary of State, the lack of opposition "almost seemed unreal," and he left the meeting "puzzled, distressed."[151] What Secretary Shultz did not know was that the President had signed a Finding on January 6. That act, an indication of the President's resolve, was not mentioned.

North Proceeds With Plans for Replenishment

That day, North called Nir in Israel and said that the United States was prepared to proceed with Nir's plan, subject to certain conditions. North said that both the President and Secretary Weinberger had agreed to the plan. North gave Nir this encoded message:

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* Secretary of State Shultz, in fact, had argued at the December 7 meeting against any arms-for-hostages trade.

> 1. Joshua [President Reagan] has approved proceeding as we had hoped.
>
> 2. Joshua and Samuel [Secretary Weinberger] have also agreed on method one [replenishment by sale, as opposed to "method two," replenishment by prepositioning].
>
> 3. Following additional conditions apply to Albert [Code name for operation?].
>
> > A. Resupply should be as routine as possible to prevent disclosure on our side. May take longer than two months. However, Albert says if crisis arises Joshua promises that we will deliver all required by Galaxie [apparently C 5A cargo plane] in less than eighteen hours.
> >
> > B. Joshua also wants both your govt and ours to stay with no comment if operation is disclosed.
>
> 4. If these conditions are acceptable to the Banana [Israel] th[e]n Oranges [U.S.] are ready to proceed.[152]

Neither of the "additional conditions" proposed by the U.S. side dealt with the substance of the operation. North's notes reflect that the purpose for "routine" resupply spread over a period of months was to enable the purchases by Israel to be broken "into lots of less than Cong[ressional] limit" and to avoid "raising eyebrows."[153] The "no comment" proposal would enable the United States—even after the operation was publicly exposed—to avoid acknowledging its central role.

Nir and North also discussed terms for replenishment sales.[154] By this time, the Chief of the Israeli Procurement Mission in New York and Noel Koch, Principal Deputy Assistant Secretary of Defense for International Security Affairs, had been designated as the Israeli and American contacts for hammering out the details.[155] Nir told North that Israel could not use the money the Iranians had paid for the 504 TOWs shipped in 1985 to buy replacements because this money was not available. On this point, North's notes state: "Regarding the first 504, it was agreed that the $ was used for other purposes."[156] Over the next few days, Nir told North that Israel could pay only $5,000-$5,500 per missile and that the Department of Defense, using a replacement cost figure, was demanding that Israel pay more.[157]

On January 9, Nir and North discussed how to use the money Iran would pay for the TOWs. North jotted the following calculation:

$10M total
2.5 to Ops
1.5 to Gorba
$6M avail for 4500[158]

The note indicates that Israel was to receive $10,000 per TOW from Iran, or $10 million for the first 1,000 TOWs. From this sum, $2.5 million was to be diverted to "Ops,"[159] which North testified were the joint Israeli-U.S. covert operations previously discussed with Nir.[160] Another $1.5 million was to go to Ghorbanifar. The remaining $6 million would be available to pay the United States for the replacement TOWs. If this scheme were followed for each of the four planned shipments of 1,000 TOWs, $10 million would go for other covert operations and Israel would have $24 million to spend on replacement TOWs—enough to purchase 4,000 missiles at $6,000 each, or 4,500 missiles at a price of $5,333 each.

The next day, January 10, Koch and North conferred about replacement of the Israeli TOWs. North's notes reflect that one option they considered was selling Israel Improved TOWs "at cos[t]."[161] The reference to Improved TOWs is significant because Israel was planning to send basic TOWs to Iran. Thus, the proposed transaction would substantially upgrade Israel's arsenal at no cost to that country. The possibility that this might be an objective of the operation had caused some CIA lawyers discomfort.[162]

After this conversation, Koch queried DOD Deputy Director Rudd about TOW prices. He apparently asked if it would be possible to ship 4,000 Basic TOWs to Israel or Iran for $12 million, or at a price of $3,000 per TOW. Rudd later told Koch that while this quantity was available, the lowest price at which basic TOWs had previously been sold was $6,800 per missile.[163]

In addition to the price, Koch was concerned about secrecy and Congressional notification. He knew that if the total value of the purchase exceeded $14 million, a Congressional notification would be required. Rudd told Koch a notification that the Israelis were buying 4,000 *basic* TOWs would be tantamount to announcing that the missiles were intended for another purchaser; informed persons would know the Israelis would have no use for more basic TOWs than it already had.[164]

Rudd counseled that the best way to get missiles secretly from the Defense Department to Iran would be to "go black"—that is, make it a covert operation with Defense selling the missiles to the CIA under an Economy Act transfer and the CIA transferring them to Iran pursuant to an intelligence Finding. Koch conveyed this conclusion to North and Weinberger's military aide, Lt. Gen. Colin Powell.[165] "Going black" appeared to overcome two difficulties in the replenishment issue: (1) maintaining secrecy and avoiding Congressional notification, and (2) avoiding the strictures of the AECA.

On January 12, Koch met the head of the Israeli Procurement Mission at National Airport in Washington to continue negotiations on price. Koch reported on this meeting to North and to Powell, who suggested that Koch meet with Secretary Weinberger. Koch met with the Secretary the next day. He described the Secretary as "generally agitated over this" and believed "this thing . . . was a very foolish undertaking." Koch commented to Secretary Weinberger, "'Do we have a legal problem with this? Is somebody going to go to jail?' and [the Secretary's] response was in the affirmative. But I did not take that seriously."[166]

In a subsequent conversation with Koch, North apparently expressed a hope that the matter could be solved and the initial steps of the operation finished in time for the President to refer to the freeing of the hostages in his State of the Union message later in January. North jotted in his notes: "Try to get results [illegible] State of Union."[167]

Legal Problems Identified With Replenishment Approach

While North continued to work with the Israelis on the replenishment problem, CIA lawyers were raising legal objections. One prepared a memorandum for Sporkin identifying the restrictions and various notification requirements that the Arms Export Control Act and Foreign Assistance Act placed on third-country transfers.[168] The lawyers concluded that weapons that had earlier been acquired from the United States under either of these acts could not be sold to Iran without "U.S. consent, notice to Congress, and the eligibility of the third country recipient for U.S. aid."[169] Because the planners had determined there would be no notice and because Iran's terrorist activities rendered it ineligible, the Israeli sale/U.S. replenishment approach was not feasible.[170] However, the lawyers concluded that a sale of weapons from DOD stocks to the CIA under the Economy Act, followed by a CIA sale to Israel or Iran, would be legal. A Presidential Finding would be required.[171]

Ghorbanifar Fails Polygraph

Ghorbanifar returned to Washington in January for his new polygraph. The examination was conducted at the CIA on January 11 and lasted five hours.[172] The CIA polygraph operator concluded that Ghorbanifar lied on 13 of 15 items on which he was questioned.[173] According to George, "The only questions he passed were his name and his nationality."[174]

After the test, a CIA officer reported in a memorandum to Casey, McMahon, and Clair George: "Ghorbanifar is a fabricator who has deliberately deceived the U.S. Government concerning his information and activities. It is recommended that the Agency have no dealing whatsoever with Ghorbanifar."[175] Afterwards, Ghorbanifar showed up at Ledeen's house "furious" and "hurting" because the questioning was more expansive than he had expected and because he claimed to be physically injured by the examination techniques.[176]

The following day, the Chief of the CIA's Iran branch briefed George and the Chief of the Near East Division (C/NE) on the negative results. They instructed him to have no further contact with Ghorbanifar or Ledeen.[177] George viewed the polygraph results as confirming his view of Ghorbanifar and declared to Casey that the Operations Directorate would have nothing more to do with the Iranian. He told North of this decision on January 13.[178] A few days later, the Operations Directorate disseminated a notice saying the CIA would do no more business with Ghorbanifar.[179]

Ghorbanifar's polygraph failure, however, did nothing to squelch his relationship with Casey and the NSC staff. Indeed, North—who "wanted" Ghorbanifar to pass[180]—had braced himself for a negative result. He told Ledeen beforehand that the CIA would make sure Ghorbanifar flunked because they did not want to work with him.[181] Casey, notwithstanding Clair George's advice to terminate the Ghorbanifar relationship, found a way to deal with Ghorbanifar outside the normal Operations Directorate headed by George. Casey ordered Charles Allen, who was the CIA's senior antiterrorism analyst, to meet with Ghorbanifar "to determine and make a record of all the information that he possessed on terrorism, especially that relating to Iranian terrorism—just take another look at this individual."[182] In George's view, Allen virtually became the case officer for Ghorbanifar.[183] To George, there could not have been a "better mismatch" between Allen—who had no experience managing an agent—and Ghorbanifar—who was especially "complex" and difficult to control.[184]

Allen spent five hours with Ghorbanifar at Ledeen's home on January 13 "to assess Subject's access to Iranian Government leaders" and to obtain information from him on terrorists. Ghorbanifar set out several areas in which he wished to work with the U.S. Government and the CIA, including the ongoing White House effort to gain the release of the hostages in Lebanon; the blunting of Iranian-, Libyan-, and Syrian-sponsored terrorism; and assisting in the overthrow of Qadhafi.[185] Allen thought some of Ghorbanifar's specific proposals worth pursuing, but he considered several of them outlandish, not worthy of exploration, and "very, very filled with hyperbole."[186]

During this session, Ghorbanifar told Allen that funds generated through the projects he was discussing could be used for "Ollie's boys in Central America."[187] Allen recorded this remark in his handwritten notes of the meeting as "can fund Contras."[188] He did not, however, refer to it in his memorandum to Casey and others on the session.[189] He later explained that at the time he did not "consider it important or even relevant to my particular mission," that he did not discuss it with anyone else, and that he "promptly forgot it."[190]

On January 14, Allen briefed Casey on his session with Ghorbanifar. He told Casey that Ghorbanifar was "very hard to pin down," "very flamboyant," "very clever, cunning." Indeed, Allen called him a "con man," to which Casey jokingly responded: "Maybe this is a con man's con man then." For the moment, Allen said, he was given no further assignment concerning Ghorbanifar.[191]

Restructuring the Deal

In mid-January, the plan for the operation was restructured in two significant respects. First, weapons to be shipped to Iran would come from U.S.—not Israeli—stocks. Second, at the direction of Poindexter, Casey, and North, Richard Secord was brought into the operation as a "commercial cut-out": a conduit for the money to be paid by Iran to the United States for the missiles. This latter change enabled the "diversion" of funds to support the Contras, which had already begun in November with the use of a part of the Israelis' $1 million deposit to Lake Resources, to continue in a more direct manner.

A one-page, unsigned memorandum dated January 13, 1986, updated Casey on the "TOW for Hostage deal." The memorandum shows that legal obstacles and the high cost of Improved TOW missiles were pushing the planners toward transforming the deal into one in which the Iranians would receive basic TOWs sold by DOD to CIA under the Economy Act. After a review of the problems with other methods, the memorandum stated:

> Therefore they want to use the second option under which CIA would buy 4,000 basic TOWs from DOD for $21 million. As far as Defense is concerned these purchases would be for general CIA uses. . . . The money for the Iranian account would be transferred to the Israelis. The Israelis would transfer that money to a CIA account to pay for this purchase of the Tows from DoD, the shippers would move the Tows to the Israelis who would then move them on to the Iranians.[192]

North met with Ledeen and Ghorbanifar that evening to discuss the plan. Ghorbanifar proposed that he would buy the TOWs from the United States—rather than from Israel—for $10,500 each. He said this was the same price he had paid the Israelis for the 504 TOWs in 1985. Ghorbanifar stated that he had "officially offered" the same rate to the Israelis for this deal, but that they now were asking for different terms. Ghorbanifar said that he had $40 million for the 4,000 TOWs, and that out of that sum he expected to receive—or at least wanted—$500,000. Ghorbanifar also explained that the total deal, negotiated with Nir before Christmas, called for the Israeli-U.S. side to provide 4,000 TOWs, the release of 100 Hizballah prisoners held by the Southern Lebanon Army, and intelligence.[193]

After this meeting, North called Koch and raised the idea of designating Secord as the person to whom the United States would sell the TOWs. North's notes suggest that DOD would sell missiles directly to Secord with no involvement of the CIA and that Secord would deliver the TOWs to the Israelis.[194] On the morning of January 14, North received a call back from Koch who expressed concern about how Secretary Weinberger would react to using Secord. North's notes of the call state: "Secretary will blanch."[195]

Both Poindexter and Casey, however, approved Secord's pivotal role in the operation. According to Secord, Poindexter invited him to the White House, told him the President had approved a renewed arms transaction with Iran, and asked for his assistance.[196] On January 14, Casey told North, according to North's notes, that "Secord Op [is] O.K."[197]

North met with Poindexter that evening. They discussed inserting Secord into the transaction as an "agent for the CIA. . . ."[198] Under this arrangement, the Iranians would receive missiles from Israeli stocks; and Secord, acting as an agent for the CIA, would simultaneously buy basic TOW missiles from DOD and sell and ship them to Israel as replacements. The CIA would not actively participate in the operation. Poindexter directed North to discuss this approach with Casey.[199] This plan called for the private North/Secord enterprise in lieu of the CIA. The CIA would have a role in name only. The Economy Act authorized *intergovernmental* transfers of weapons, but would not permit DOD to sell directly to Secord unless he were designated an "agent" of the CIA.

The barrier to the plan was Secretary Weinberger. Although Casey was on board, Secretary Weinberger continued to raise objections both to the plan and to Secord's involvement. In a PROF message to Poindexter on January 15, North wrote:

> Casey believes that Cap [Weinberger] will continue to create roadblocks until he is told by you that the President wants this to move NOW and that Cap will have to make it work. Casey points out that we have now gone through three different methodologies in an effort to satisfy Cap's concerns and that no matter what we do there is always a new objection. As far as Casey is concerned our earlier method of having Copp [Secord] deal directly with the DoD as a purchasing agent was fine. He did not see any particular problem w/ making Copp an agent for the CIA in this endeavor but he is concerned that Cap will find some new objection unless he is told to proceed.[200]

In the same PROF message, North indicated that the "most recent proposal" to use Secord as an agent for the CIA depended on the Israelis' agreeing to pay a higher price than they were then offering the United States. The message suggests that North, knowing that Ghorbanifar was willing to pay $10,000 a TOW to the Israelis, was seeking to have more of the residual profit flow to the American side rather than to Schwimmer and Nimrodi.

Minutes after writing this PROF message, North met with Sporkin to discuss Secord's role.[201] Sporkin interrupted this meeting to telephone one of his staff lawyers, George Clarke, to discuss whether there would be any "problems or reporting requirements" with the North/Poindexter proposal to use Secord as an "agent" of the CIA but to otherwise leave the CIA out of the operation.[202] North came on the line to exhort Clarke to endorse this approach.[203] According to a "memorandum for the record" written by Clarke, the conversation went as follows:

> 1. At approximately 1420 hours today I received a secure line telephone call from the General Counsel. He wanted to discuss whether I saw any problems or reporting requirements with a proposal to have DoD provide weapons to a CIA "agent" who would pay for the weapons with money supplied by a friendly third country. The agent would then supply the weapons to the intended recipient country. The agent would have no connection with CIA other than to act as a "middle man" with our authority.
>
> 2. I told the General Counsel that I would feel more comfortable if CIA were directly involved in the activity and that it would be essential that we act in furtherance of a traditional covert action objective. . . .
>
> 3. Despite repeated urgings to concur in variations that would have DoD provide the weapons without other than token CIA involvement, I did not do so. . . .[203a]

Sporkin recalled an "argument with one of my people" about whether there was a way to structure the transaction without the CIA's getting involved. "The answer was no way."[204]

After this meeting, Sporkin prepared a paper for Casey. He advised that the "preferred way to handle the proposal" was for the CIA to take control of the materiel through an Economy Act transfer from DOD before it was moved to the Middle East. Sporkin wrote that he could find no precedent for the purchase of materiel from DOD by someone acting as a CIA "agent," where the CIA had no other role in the transaction. Sporkin's paper did not address whether the CIA, after acquiring the arms from DOD, could deal with an intermediary, such as Secord, rather than directly with the foreign country recipient.[205] One of Sporkin's main concerns was the question of notifying Congress:

> The key issue in this entire matter revolves around whether or not there will be reports made to Congress. Each of the Acts involved—the Foreign Assistance Act, the Arms Export Control Act, and indeed the National Security Act as amended—have certain reporting provisions in them. While the National Security Act provides for a certain limited reporting procedure, it is my view that there may be other ways of making a suitable report by exercise of the President's constitutional prerogatives.
>
> One such possibility would be not to report the activity until after it has been successfully concluded and to brief only the chairman and ranking minority members of the two Oversight Committees. This would maximize the security of the mission and reduce the possibility of its premature disclosure.[206]

Later that afternoon, North spoke again with Sporkin, who urged that the "final proposal" be "run by" the Attorney General.[207]

At 2:30 p.m. that day, North received a call from Nir. The conversation again focused on the financial aspects of the transaction. North's notes refer to a 25 percent cut to be paid to "other Iranians" and a 15 percent cut to "accountant," the code name for Schwimmer. Most significantly, the two discussed Secord's receiving more for the TOWs than he would have to pay to DOD. North wrote: "7500 each to Copp. 5300 each to DOD."[208] Using these figures, and assuming that the deal would involve 4,000 TOWs, Secord would receive $8.8 million over his cost of buying the missiles from DOD.

The next day, January 16, North continued to try to find a way to start the part of the operation that would lead to the release of the American hostages, namely, the shipment of 1,000 TOWs to Iran. At Poindexter's request, North first contacted McFarlane to find out what the understanding had been on replenishment of the first 504 TOWs, an issue that continued to be a sticking point for Israel. McFarlane replied that the United States had undertaken to sell, over time, "requisite TOWs to replace the TOWs that they sent for Weir."[209] In his notes of this phone call, North wrote: "The objection in law [is] based on Arms Export Control Act."[210] North passed this information to Poindexter, along with an explanation that replenishment had been blocked because the Israelis lacked sufficient funds to purchase Improved-TOWs and because bureaucratic problems had prevented a purchase of basic TOWs.[211]

North came up with a modified plan to get the operation moving. He proposed to Poindexter that Nir deal directly with Ghorbanifar and receive $10 million for the first 1,000 TOWs to be shipped by Israel. Schwimmer and the Iranian officials would be "cut-out" from the expected profits, and a much larger sum would be available to Nir for replenishment or other uses. North also proposed that Secord purchase 504 TOWs from the United States and ship them to Israel as replenishment for the 1985 transactions.[212]

That same afternoon, Poindexter convened in his office a meeting of senior administration officials to discuss the structuring of the transaction, the continuing objections of Secretary Weinberger, and the proposed Finding.[213] Present were Secretary Weinberger, Casey, Attorney General Meese, Sporkin, and possibly North.[214]* The Attorney General said Israel should not ship weapons out of its stocks and recommended that the United States instead sell directly to the Iranians. Restructuring the operation in this way, he explained, would avoid the restrictions of the Arms Export Control Act, including Congressional reporting requirements.[215]

Sporkin recalled that no decision was made at the meeting and that Secretary Weinberger wanted additional time to examine the revised structure of the plan:

> [A]s we were breaking up, the Secretary of Defense said that I want to review all this. I want to have my lawyers look at it and to see if that analysis is correct. And so the meeting broke up without there being any decision made.
>
> The next day, I received a call from the Director—I think it was the next day—in which he said that he received a call from the—from the Secretary of Defense, who said that his people have looked it over and they agree with the analysis and they have signed off on the project.[216]

Secretary Weinberger was unable to recall, or find anyone at the Defense Department who had performed, any such legal review.

President Signs A New Finding

Poindexter now arranged to get the President to sign the Finding. At the January 17, 1986 national security briefing attended by the President, the Vice President, Regan, Poindexter, and Fortier, Poindexter discussed the plans and referred to a new cover memorandum. The President did not read the memorandum, but he signed the Finding. To indicate the President's decision, Poindexter wrote "RR per JMP" on the approval line of the memorandum. At the bottom of the memorandum, he also wrote: "President was briefed verbally from this paper. VP, Don Regan and Don Fortier were present."[217]

The January 17 Finding was almost identical to the draft Finding presented to the President on January 6. The only change was the insertion of the words "third parties" in the list of entities to be assisted by the CIA.[218] The Committees have received from NSC files a copy of the January 6 version of the Finding that bears Sporkin's handwritten insertion of this phrase.[219] Sporkin testified that this change was made merely to make the first paragraph of the Finding symmetrical with the second, which already contained a reference to "third parties." He said that the term did not refer to Secord but to Ghorbanifar and other Iranian intermediaries.[220]

The cover memorandum, which North prepared and Poindexter signed, contained the same summary of the Nir proposal that North had included in his January 4 draft cover memorandum. However, the new memorandum stated that for legal reasons the operation should not be conducted as Nir proposed and should instead proceed with sales of arms from the CIA through an agent directly to Iran. Following the advice Attorney General Meese had provided the previous day, the memorandum stated:

> We have researched the legal problems of Israel's selling U.S. manufactured arms to Iran. Because of the requirement in U.S. law for recipients of U.S. arms to notify the U.S. government of transfers to third countries, I do not recommend that you agree with the specific details of the Israeli plan.

The memorandum outlined the new plan to make direct sales from the CIA to Iran through Secord, who was identified only as "an authorized agent":

> The objectives of the Israeli plan could be met if the CIA, using an authorized agent as necessary, purchased arms from the Department of Defense under the Economy Act and then transferred them to Iran directly after receiving appropriate payment from Iran.

This new method was to accomplish the 4,000-TOW transaction that Nir had originally proposed. The memorandum stated:

> Therefore it is proposed that Israel make the necessary arrangements for the sale of 4000 TOW weapons to Iran. Sufficient funds to cover the sale would be transferred to an agent of the CIA. The CIA would then purchase the weapons from the Department of Defense and deliver the weapons to Iran through the agent. If all the hostages are not released after the first shipment of 1000 weapons, further transfers would cease.[221]

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* Poindexter recalled that Shultz was also present. Poindexter Test., *Hearings*, 100-8, at 35. Shultz testified that he was not, Shultz Test., *Hearings*, 100-9, at 33, and Sporkin testified that he was told Shultz had been invited but could not make it. Sporkin Test., *Hearings*, 100-6, at 149. Weinberger had no recollection of attending this meeting. Weinberger Test., *Hearings*, 100-10, at 141.

As was the case with North's earlier draft, the cover memorandum tc the President from Poindexter stated that "[t]he Israelis are very concerned [about] Iran's deteriorating position in the war with Iraq" and "believe it is essential that [Israel] act to at least preserve a balance of power in the region." In fact, Secretaries Weinberger and Shultz and Deputy Director McMahon all subsequently testified that this assessment of the state of the Iran-Iraq conflict was contrary to U.S. intelligence estimates. Secretary Weinberger stated:

> I certainly did not have the view that Iraq was winning or anything of that kind. Quite to the contrary. As a matter of fact, it was basically Iraqi military strategy not to pursue any kind of decisive military end. . . .[222]

Secretary Shultz said that while there was an intelligence estimate in mid-1985 suggesting that the Iranian position was deteriorating, he and others in the State Department had objected to it and by early 1986 there was a "reassessment" to the effect that Iran was viewed as "very much the aggressive country in the war."[223] McMahon made the same point: "I don't have the vaguest idea where Poindexter got the idea that the Iraqis were about to take over Tehran. It just wasn't in the cards."[224]

The cover memorandum also gave the President a lineup of the varying positions of his advisers on the proposed operation:

> You have discussed the general outlines of the Israeli plan with Secretaries Shultz and Weinberger, Attorney General Meese and Director Casey. The Secretaries do not recommend you proceed with this plan. Attorney General Meese and Director Casey believe the short-term and long-term objectives of the plan warrant the policy risks involved and recommend you approve the attached Finding.[225]

Defense Secretary Weinberger testified to the Committees that he was unaware that a Finding had been signed.[226] However, he recalled that around January 18, Poindexter told him the President had decided to sell 4,000 TOW missiles to Iran and instructed him to make the missiles available.[227]

Secretary of State Shultz testified he was unaware even of the Presidential decision to sell the weapons. He recalled a luncheon with the President's other top advisers on January 17, during which he expressed opposition to what he thought was still an unapproved plan to sell weapons to Iran.[228]

According to the Tower Board, in his diary entry for January 17, 1986, the President wrote: "I agreed to sell TOWs to Iran."[229]

Conclusion

With the signing of the Finding, the Administration was embarked on an arms-for-hostages initiative with Iran in which the United States—not Israel—would play the lead role. The President set this course over the continued objections of his Secretaries of Defense and State, and notwithstanding the CIA's renewed determination that the Iranian intermediary, Ghorbanifar, could not be trusted.

In a change from the 1985 arms deals, Poindexter, Casey, and North had structured the transactions planned for 1986 in a manner that would leave the United States in possession and control of the large "residuals" that would flow from the sales. Secord and the Lake Resources Enterprise were established as a conduit for the money paid for the missiles by Iran. North and Nir had several ideas about how these profits would be used. Foremost in North's mind was the potential for diversions to the Contra effort.

Chapter 11

1. North Notebook, 11/27/85 (misdated 10/27/85), Q1357.
2. Ledeen Dep., 6/19/87, at 112.
3. *Id.* at 112.
4. Secord Test., *Hearings*, 100-1, at 90.
5. North Notebook, 12/1/85, Q1360-Q1361.
6. Secord Test., *Hearings*, 100-1, at 90.
7. North Notebook, 12/1/85, Q1361.
8. *Id.*
9. Secord Test., *Hearings*, 100-1, at 90.
10. Israeli Historical Chronology; North Notebook, 12/2/85, Q1367.
11. Israeli Historical Chronology, to the extent the passage refers to replenishment of Israeli stocks.
12. *Id.*
13. Armitage Dep., 7/22/85, at 169, 173.
14. *Id.* at 174.
15. Gaffney Test., *Hearings*, 100-6, at 65-67; Extract from Gaffney Work Diary, Ex. DOD-8, *Hearings*, 100-6; Gaffney-Rudd Dep., 6/22/87, at 2-7.
16. "Prospects for Immediate Shipment of I-HAWK and I-TOW missiles," Ex. DOD-9, *Hearings*, 100-6.
17. Gaffney-Rudd Dep., 6/22/87, at 19.
18. Armitage Dep., 7/22/87, at 207.
19. PROF Note, North to Poindexter, 12/4/85 (02:02:55), Ex. JMP-21, *Hearings*, 100-8.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. Clarridge Test., *Hearings*, 100-11, at 22.
25. Unsigned Paper, "Special Project Re Iran," 12/5/85, *Hearings*, Ex. OLN-49, 100-7, Part III.
26. *Id.* (emphasis added).
27. CIA Cables between Headquarters and CIA Chiefs in Countries 16 and 18, C5774-5814.
28. CIA Cable from headquarters to CIA Chief in Country 16, C5805; CIA Cable from headquarters to CIA Chiefs in Countries 16 and 18, C5810.
29. CIA Cable from Headquarters to CIA Chiefs in Countries 16 and 18, 12/3/85, C5812.
30. CIA Deputy Chief, Europe, Interview Report, 8/26/87.
31. McFarlane Test., *Hearings*, 100-2, at 55, 104-05.
32. *Id.* at 105.
33. Poindexter Test., *Hearings*, 100-8, at 18, 123.
34. *Id.* at 17-18, 123-25.
35. Poindexter Handwritten Note, 12/5/85, Ex. JMP-20, *Hearings*, 100-8.
36. Regan Test., *Hearings*, 100-10, at 13-14.
37. Poindexter Test., *Hearings*, 100-8, at 17-18, 125.
38. *Id.* at 273.
39. *Id.* at 19.
40. McMahon Dep., 6/1/87, at 109.
41. Poindexter Test., *Hearings*, 100-8, at 18-21.
42. Shultz Test., *Hearings*, 100-9, at 7.
43. *Id.* at 7.
44. Shultz Tower Int., 1/22/87, at 29.
45. Memorandum for the Record by McMahon's Special Assistant, 11/28/86 (reconstruction of notes from 12/5/85 meeting), I0396-97.
46. Israeli Historical Chronology.
47. North Test., *Hearings*, 100-7, Part I, at 295.
48. North Test., *Hearings*, 100-7, Part I, at 106, 294-95.
49. Secord Test., *Hearings*, 100-1, at 91.
50. North Notebook, 12/6/85, Q1377.
51. The Vice President was not present.
52. McFarlane Test., *Hearings*, 100-2, at 55.
53. Weinberger Test., *Hearings*, 100-10, at 135-36.
54. Shultz Talking Points, 12/7/85, Ex. GPS-16, *Hearings*, 100-9.
55. Weinberger Test., *Hearings*, 100-10, at 137.
56. *Id.* at 136.
57. Weinberger Tower Int., 1/14/87, at 11.
58. McMahon Dep., 6/1/87, at 124.
59. *Id.* at 127.
60. Allen Dep., 4/21/87, at 169.
61. Shultz Iran Chronology, Ex. GPS-B at 3, *Hearings*, 100-9.
62. Shultz Test., *Hearings*, 100-9, at 31.
63. *Id.* at 31-32.
64. *Id.* at 32.
65. Poindexter Test., *Hearings*, 100-8, at 25.
66. McFarlane Test., *Hearings*, 100-2, at 56.
67. McMahon Dep., 6/1/87, at 125.
68. Weinberger Test., *Hearings*, 100-10, at 137.
69. Shultz Test., *Hearings*, 100-9, at 32.
70. McMahon Dep., 6/1/87, at 127-28; Weinberger Test., *Hearings*, 100-10, at 138.
71. Poindexter Test., *Hearings*, 100-8, at 26.
72. McFarlane Test., *Hearings*, 100-2, at 56.
73. Shultz Iran Chronology, Ex. GPS-B at 3, *Hearings*, 100-9.
74. *Id.*
75. McFarlane Test., *Hearings*, 100-2, at 56-57; Secord Test., *Hearings*, 100-1 at 92.
76. McFarlane Test., *Hearings*, 100-2 at 57.
77. *Id.* at 103.
78. *Id.* at 57, 180.
79. Memorandum from North to McFarlane and Poindexter, 12/9/85, Ex. OLN-51, *Hearings*, 100-7, Part III.
80. *Id.*
81. Secord Test., *Hearings*, 100-1, at 92-93.
82. Allen Dep., 4/24/87, at 255.
83. Memorandum from North to McFarlane and Poindexter, 12/9/85, Ex. OLN-51, *Hearings*, 100-7, Part III.
84. *Id.* (emphasis in original).
85. North Test., *Hearings*, 100-7, Part I, at 285.
86. Memorandum from North to McFarlane and Poindexter, 12/9/85, Ex. OLN-51, *Hearings*, 100-7.
87. North Test., *Hearings*, 100-7, Part I, at 282; Memorandum from Casey to Deputy Director of Central Intelligence, 12/10/85, Ex. CG-47, *Hearings*, 100-11; Regan Test., *Hearings*, 100-10, at 14.
88. *Id.*; Memorandum from Casey to Deputy Director of Central Intelligence, 12/10/85, Ex. CG-47, Hearings, 100-11; Poindexter Test., *Hearings*, 100-8, at 29-30.
89. *Id.*; McFarlane Test., *Hearings*, 100-2, at 57; Poindexter Test., *Hearings*, 100-8, at 26-27.
90. Memorandum from Casey to Deputy Director of Central Intelligence, 12/10/85, Ex. CG-47, *Hearings*, 100-11.
91. McFarlane Test., *Hearings*, 100-2, at 59.

92. Memorandum from Casey to Deputy Director of Central Intelligence, 12/10/85, Ex. CG-47, *Hearings*, 100-11.

93. *Id.*

94. Poindexter Test., *Hearings*, 100-8, at 335.

95. State Department Cable, from Armacost to Shultz, 12/11/85, Ex. GPS-17, *Hearings*, 100-9.

96. CIA Cable, Headquarters to CIA Chiefs in Countries 16 and 18, 12/11/85, Ex. OLN-69, *Hearings*, 100-7 Part III.

97. Poindexter Test., *Hearings*, 100-8, at 127-28.

98. North Test., *Hearings*, 100-7, Part I, at 285.

99. *Id.*; Poindexter Test., *Hearings*, 100-8, at 128.

100. Poindexter Test., *Hearings*, 100-8, at 127-28.

101. Allen Memo. for Record, 12/18/85, Ex. CG-45, *Hearings*, 100-11; Allen Dep., 4/24/87, at 229; Ledeen Dep., 6/22/87, at 166-80, 248-50.

102. Allen Dep., 4/24/87, at 288-89.

103. Ledeen Dep., 6/19/87, at 114; Ledeen Dep., 6/22/87, at 187-88, 246.

104. Clair George Test., *Hearings*, 100-11, at 210.

105. Memorandum for Director of Central Intelligence from Chief, Iran branch, Subject: Meeting with Michael Ledeen/Manuchehr Ghorbanifar, Ex. CG-49, *Hearings*, 100-11.

106. Clair George Test., *Hearings*, 100-11, at 210.

107. Letter from Casey to the President, 12/23/85, C4852-53.

108. CIA Fabricator Notice on Ghorbanifar, 7/25/84, C1462-64.

109. Israeli Historical Chronology.

110. *Id.*

111. *Id.*

112. Poindexter Handwritten Notes, 1/2/86, Ex. JMP-23, *Hearings*, 100-8.

113. Israeli Historical Chronology.

114. *Id.*; Poindexter Test., *Hearings*, 100-8, at 27-29.

115. Poindexter Handwritten Notes, 1/2/86, Ex. JMP-23, *Hearings*, 100-8.

116. *Id.*

117. *Id.*

118. *Id.*

119. Poindexter Test., *Hearings*, 100-8, at 57.

120. North Test., *Hearings*, 100-7, Part I, at 296. The Israeli Chronologies do not corroborate this version.

121. Poindexter Handwritten Note, 1/2/86, Ex. JMP-23, *Hearings*, 100-8.

122. Poindexter Test., *Hearings*, 100-8, at 130.

123. Sporkin Test., *Hearings*, 100-6, at 129.

124. Roseman Dep., 6/10/87, at 8-9, 18.

125. Draft Covert Action Finding, 1/2/86, Ex. SS-6, *Hearings*, 100-6.

126. Draft Covert Action Finding (Sporkin-redraft), 1/3/86, Ex. SS-8, *Hearings*, 100-6; Sporkin Test., *Hearings*, 100-6, at 133-134.

127. *Id.* at 135-136.

128. *Id.* at 136.

129. *Id.*; North Test., *Hearings*, 100-7, Part I, at 289; Draft Covert Action Finding (North redraft), 1/3/86, Ex. SS-9, *Hearings*, 100-6.

130. *Id.*

131. Sporkin Test., *Hearings*, 100-6, at 136.

132. Memorandum from North to Poindexter, Subject: Covert Action Finding on Iran, 1/4/86, Ex. OLN-52, *Hearings*, 100-7, Part III.

133. Unsigned Memorandum for the President from Poindexter, prepared by North, undated, Ex. OLN-52, *Hearings*, 100-7, Part III.

134. *Id.*

135. *Id.*

136. Sporkin Test., *Hearings*, 100-6, at 139-142.

137. *Id.* at 142-144.

138. Unsigned Memorandum for the President from Poindexter, Prepared by North, undated, N1323-25

139. North Test., *Hearings*, 100-7, Part I, at 289; North Calendar, 1/6/86, N11822; Jensen Dep., 7/6/87, at 19-33.

140. Meese Test., *Hearings*, 100-9, at 196.

141. Jensen Dep., 7/6/87, at 27.

142. Poindexter Test., *Hearings*, 100-8, at 30.

143. NSC Meeting Chronology, unsigned and undated, N7718.

144. Poindexter Test., *Hearings*, 100-8, at 30.

145. NSC Meeting Chronology, unsigned and undated, N7718.

146. Shultz Test., *Hearings*, 100-9, at 33.

147. Weinberger Test., *Hearings*, 100-10, at 138-40.

148. Poindexter Test., *Hearings*, 100-8, at 31.

149. Weinberger Test., *Hearings*, 100-10, at 139.

150. Meese Test., *Hearings*, 100-9, at 197.

151. Shultz Test., *Hearings*, 100-9, at 33.

152. North Notebook, 1/7/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.* The Israeli Historical Chronology does not support this note.

157. North Notebook, 1/9/86, Ex. OLN-69A, *Hearings*, 100-7, Part III; Israeli Historical Chronology.

158. North Notebook, 1/9/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

159. *Id.*

160. North Exec. Sess. Test., 7/9/87, at 10.

161. North Notebook, 1/10/86, OLN-69A, *Hearings*, 100-7, Part III.

162. Memorandum for the Record, George W. Clarke, 1/15/86, Ex. SS-17, *Hearings*, 100-6.

163. Koch Test., *Hearings*, 100-6, at 71-72; Rudd Dep., 6/16/87, at 16-19.

164. Koch Test., *Hearings*, 100-6, at 72.

165. *Id.* at 72-73.

166. *Id.* at 74-77. Weinberger did not recall such a discussion.

167. North Notebook, 1/13/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

168. CIA Legal Staff Memorandum, Subject: Third Country Transfer of Equipment Provided Under the Foreign Assistance or Arms Export Control Acts, Ex. SS-20, *Hearings*, 100-6.

169. CIA Legal Staff Memorandum, Subject: Proposed Iran Finding, 1/7/86, Ex. SS-13, *Hearings*, 100-6.

170. *Id.*

171. *Id.*

172. CIA Memorandum on Ghorbanifar Polygraph, 1/13/86 (incorrectly dated '85), C6092-95.

173. *Id.*

174. George Test., *Hearings*, 100-11, at 159.

175. Routing and Record Sheet from Chief of the Near East Division of the CIA to various CIA officials, 1/13/86, C6089.

176. Ledeen Dep., 6/22/87, at 260-61.

177. Chief of CIA Iran branch Int., 4/13/87.

178. North Notebook, 1/13/86, Ex. OLN-69A, *Hearings*, 100-7, Part III; George Test., Exec. Sess., *Hearings*, 100-11, at 159-60.

179. *Id.* at 160.

180. George Test., Exec. Sess., *Hearings*, 100-11, at 159.

181. Ledeen Dep., 3/11/87, at 100-01.

182. Allen Dep., 4/24/87, at 312.

183. George Test., Exec. Sess., *Hearings*, 100-11, at 161.

184. *Id.*

185. Allen Memorandum for the Record, 1/29/86, Ex. CG-51, *Hearings*, 100-11.

186. Allen Dep., 4/24/87, at 324-35.

187. Memorandum for Carroll L. Hauver from Charles E. Allen, February 13, 1987, C184-85.

188. Allen Handwritten Notes of Meeting with Ghorbanifar, 1/13/86, C180.

189. Allen Memorandum for the Record, 1/29/86, Ex. CG-51, *Hearings*, 100-11.

190. Allen Dep., 6/4/87, at 323-27.

191. *Id.* at 339-40.

192. Unsigned Memorandum, 1/13/86, Ex. OLN-55, *Hearings*, 100-7, Part III.

193. North Notebook, 1/13/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

194. North Notebook, 1/13/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

195. North Notebook, 1/14/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

196. Secord Test., *Hearings*, 100-1, at 96-97.

197. North Notebook, 1/14/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

198. *Id.*

199. *Id.*

200. North PROF, 1/15/86, 13:02:18, Ex. OLN-57, *Hearings*, 100-7, Part III.

201. Sporkin Calendar, 1/15/86, C1780; North Calendar, 1/15/86, N11824.

202. Memorandum for the Record, George Clarke, 1/15/86 (1440 Hours) Ex. SS-17, *Hearings*, 100-6.

203. *Id.*; Clarke Dep., 6/3/87, at 66-67.

203a. Ex. SS-17.

204. Sporkin Test., Senate Select Committee on Intelligence, 12/3/86, at 77.

205. Talking Points prepared for Casey by Sporkin, 1/15/86, Ex. SS-16, *Hearings*, 100-6.

206. Sporkin Talking Points for Casey, 1/15/86, *Hearings*, Ex. SS-16, *Hearings*, 100-6.

207. North Notebook, 1/15/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

208. North Notebook, 1/15/86, Ex. OLN-69A, *Hearings*, 100-7, Part III.

209. North Notebook, 1/16/85 (misdated 1/15/86), Ex. OLN-69A, *Hearings*, 100-7, Part III.

210. *Id.*

211. PROF Note, North to Poindexter, 1/16/86 (13:39:54), Ex. OLN-57, *Hearings*, 100 7, Part III.

212. *Id.*

213. Sporkin Test., *Hearings*, 100-6, at 149; Poindexter Test., *Hearings*, 100-8, at 35; PROF Note, North to Poindexter, 1/15/86 (18:37:47), Ex. OLN-57, *Hearings*, 100-7, Part III.

214. NSC Meeting Chronology, N7718; Poindexter Test., *Hearings*, 100-8, at 35.

215. Poindexter Test., *Hearings*, 100-8, at 128.

216. Sporkin Test., *Hearings*, 100-6, at 149-50.

217. Memorandum for the President from Poindexter, 1/17/86, Subject: Covert Action Finding Regarding Iran, Ex. JMP-28, *Hearings*, 100-8; Iran Finding, 1/17/86, *Hearings*, Ex. JMP-29D, *Hearings*, 100-8.

218. Iran Finding, 1/17/86, *Hearings*, Ex. JMP-29D, *Hearings*, 100-8.

219. Iran Finding, 1/6/86 (Draft with Sporkin handwritten edits), Ex. SS-15, *Hearings*, 100-8.

220. Sporkin Test., *Hearings*, 100-6, at 153.

221. Memorandum for the President from Poindexter, 1/17/86, Ex. JMP-28, *Hearings*, 100-8.

222. Weinberger Test., *Hearings*, 100-10 at 146.

223. Shultz Test., *Hearings*, 100-9 at 159.

224. McMahon Dep., 9/2/87 at 68.

225. Memorandum for the President from Poindexter, 1/17/86, Ex. JMP-28, *Hearings*, 100-8.

226. Weinberger Test., *Hearings*, 100-10, at 242.

227. Weinberger Test., *Hearings*, 100-10, at 381-383.

228. Shultz Test., *Hearings*, 100-9, at 187-188.

229. Tower Report at III-12.

Chapter 12

Arms Sales to Iran: The United States Takes Control

The President's decision to sign the Finding on Friday, January 17, 1986, marked the beginning of U.S. control over the Iran arms sales initiative. In November 1985, the United States had acted as a necessary and supporting player to the Israeli plan to ship weapons; the January 17 Finding established that weapons from U.S. stocks would be transported and sold under U.S. control.

The Finding also brought the Central Intelligence Agency (CIA) into the initiative in a more substantial way than it had been in the prior shipment. Yet despite the Finding, the CIA would continue to play only a supporting role to the National Security Council (NSC)-sponsored initiative. While providing logistic and technical support—and a mechanism for getting the weapons from the Department of Defense (DOD) under the Economy Act—the CIA deferred to the NSC staff in evaluating the reliability of the intermediaries and the likelihood of success of the initiative.

Over the next few months, negotiations among the Iranian representatives, the intermediary, and the American officials continued. The pattern established in the 1985 sales would continue. In February, the United States sold 1,000 TOW missiles to Iran and no hostages were released. Instead, the Iranians insisted on the sale of HAWK spare parts and the United States agreed.

Although the arms sales were a failure in achieving the goals set forth in the Finding, they were successful in another way. The Iranians were willing to pay substantially more for the military goods than they cost, and part of the excess filled the bank account of the Enterprise. As North testified, the possibility of using these profits to aid the Contras provided additional incentive to pursue the Iranian initiative.

The Finding Is Implemented

On January 18, CIA General Counsel Stanley Sporkin, CIA Deputy Director for Operations Clair George, and the CIA Deputy Chief of the Near East Division (DC/NE) met in the White House Situation Room with National Security Adviser John Poindexter, Oliver North, and Richard Secord to define the Agency's responsibilities. Poindexter and North told the CIA representatives that the Finding had been signed and discussed with them the CIA's role in the arms sales initiative. The CIA's "point man," DC/NE, was to arrange for the Agency to acquire 4,000 TOW missiles from the DOD for sale to Iran. He was also instructed to establish a CIA account through which funds could be delivered to the Department of Defense for purchase of the missiles.[1] Although the Finding was directed to the CIA, the Agency's responsibilities as outlined at the meeting put it in a role of lending logistic support for the NSC staff, which would be principally conducting the negotiations.

DC/NE recalled that the group discussed a provision in the Finding that instructed the CIA Director not to notify Congress of the covert activity:

> I think Admiral Poindexter did say that this was a very sensitive undertaking . . . and that the President felt very strongly that the Congress would not be notified until a later date. I took that later date to mean after the hostages were released . . . that after the delivery of the first shipment of TOWs the hostages would be released, meaning all of the American hostages in Lebanon. So we were looking at this . . . as a fairly short-termed thing.[2]

At the January 18 meeting, George met Secord for the first time when Secord was introduced as a consultant to the NSC.[3] George knew of Secord's past association with Edwin Wilson, the former CIA officer who was then serving time in a Federal prison for a variety of offenses. George was concerned about Secord's involvement and following the January 18 meeting advised Director Casey of his opinion.[4] George cautioned Casey: "If they are going to ship arms to Iran for hostages . . . don't use Secord."[5]

George expressed even greater disapproval when he discovered that Iranian intermediary Manucher Ghorbanifar was to be involved. The exact point at which George became aware of Ghorbanifar's role in the Iran initiative is unknown, although he implied in testimony that he knew either as a result of, or shortly following, the January 18 meeting. Shortly after Ghorbanifar failed a CIA polygraph test on January

11, 1986, George issued a "field notice"* to senior CIA officials in Europe instructing them to avoid dealing with Ghorbanifar. Only a few days later while in the White House, George was "given the Finding to which, surprise, surprise, the guy I am going to be dealing with or supporting the National Security Council to deal with, is Ghorbanifar."[6]

Prior to the signing of the January 17 Finding, George advised North of Ghorbanifar's polygraph test results. He also recalled warning Casey against dealing with Ghorbanifar, but "before I could go through one more fight about Mr. Ghorbanifar, [the CIA] received a Presidential order which . . . ended up meaning we were dealing with Mr. Ghorbanifar." Eventually, Casey designated Charles Allen to oversee Ghorbanifar's activities.[7]

North told the CIA officers that the arms sales were imminent. DC/NE moved quickly to implement the plan: on January 20, he instructed the CIA Director of Finance to designate a Swiss bank account that could be used immediately for a large deposit. The finance officer identified a Swiss account number, which DC/NE later forwarded to the NSC. A "clean," or unused, account was originally requested to avoid commingling funds from the sale of TOWs with those used for other Agency purposes. Because the Agency's finance officers needed several days to open a clean account, DC/NE decided to use an existing CIA account customarily available for large transactions.[8]

DC/NE told his finance officers to expect a deposit of $30 million. He based this figure on an estimate he had received from DOD of approximately $6,000 per TOW and indicated that the deposit would come from a "private source."[9]

DC/NE asked North for a contact at DOD with whom he could arrange to obtain the TOWs. North told DC/NE to contact Secretary Weinberger's military aide, then-Maj. Gen. Colin Powell. When DC/NE telephoned Powell several days later, the general explained that he was aware of the sensitivity of the operation, knew where the weapons were to be delivered, and knew the covert activity was supported by a Finding. Powell named Lt. Gen. Vincent M. Russo as the CIA's contact at DOD.[10]

Russo told DC/NE originally that the price would be around $6,000 per TOW, a price with which North had problems. DC/NE recalled North's reaction to that figure:

> The initial price was precisely—it was Russo telling me it was going to be something around 6,000 per. And I recall telling North that and he recalled—it doesn't make any difference to me [DC/NE] whether they charge three or six or nine—I recall North saying, 'well, that is too high, they must be giving you a brand new missile replacement cost figure, and they should be charging for the oldest model TOW in stock. We don't care if these things in fact work real well. Tell the Army that we want the oldest thing they can find in the warehouse.' So I went back to Russo and said, let me make clear that we don't need the very best, latest thing right off the factory line.

The eventual price was approximately $3,400 per TOW, including freight costs.[11]

North's attitude that he did not "care if these things in fact work real well" is inconsistent with the goals of opening a broader initiative with Iran and freeing the hostages. Demonstrably antiquated or unworkable merchandise most likely would promote distrust; indeed, the controversy over the November 1985 HAWK shipment had been caused in part by the Iranians' claim that the 18 HAWKs did not meet their expectations.

DC/NE next directed a CIA logistics officer to coordinate through the Defense Department for the TOW purchases. DC/NE told the officer that the weapons transfer was a direct arms-for-hostages exchange that would occur soon. The officer stated that the proposed price of the TOWs—$6,000 each—was a reasonable cost for the improved version of the missile. Upon contacting Russo, however, he learned that the CIA could obtain the basic TOW, the oldest one in the Army's stocks, for approximately $3,400 per missile.[12]

On January 20, North noted: "Price must be firm for Defense [Department]—Must be less than 6K." Under the figure showing 4,504 TOWs, North jotted, "Nir knows 10K upper limit—Dick [Secord] arrange w/Nir".[13] The notes suggest that Nir and North had agreed that the TOWs sold to Iran must not exceed $10,000 per unit but that the CIA would not pay more than the original DOD price of $6,000 per TOW. In the plan to sell 1,000 of the missiles to Iran in February, North and Nir were expecting to obtain $4 million above the cost of the missiles. When North learned he could obtain the basic TOW for substantially less, the anticipated profit for the Enterprise increased.

The Army Executes the Tasking

On January 18, Powell telephoned Gen. Maxwell R. Thurman, Vice Chief of Staff of the Army, with a secret, "close hold" assignment for the Army: to prepare 4,000 basic TOW missiles to be shipped to the CIA.[14] Within a week, the number was increased to 4,508 to cover the 508 missiles[15] Israel had shipped in September that McFarlane had agreed to replenish. Thurman, who was not told the ultimate destination of the missiles or the purpose of the shipment, delegated the responsibility down the chain of command[16] and ultimately to Maj. Christopher Simpson.[17]

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*A "field notice" is a fabricator warning issued to specific CIA stations, as opposed to a "burn notice," which receives world-wide CIA distribution.

The instructions were to maintain a degree of secrecy unusual even for weapon transfers to the CIA: no notes; communications only by secure telephone or face to face; and the number of people privy to the operation kept to a minimum. The imposition of such extraordinary secrecy led the Army to bypass its normal system for interagency transfers, with that system's safeguards against underpricing, depleting stockpiles, and affecting defense readiness.[18] Even though the secrecy guidelines were strictly observed, an apparently accidental error in the price became crucial. By inadvertently using the wrong stock number for the TOW, the Army underpriced the missile and created a price differential broad enough to generate a significant surplus of funds for the Enterprise.

Pricing the TOW Missiles

Simpson went directly to the TOW Project Manager at the Army Missile Command at Redstone Arsenal in Huntsville, Alabama. Powell had been asked to provide a "basic," or "vanilla," TOW—one that had not been manufactured since 1975. The basic TOW, however, had experienced mechanical problems that required the Army to make design modifications.[19] The TOW Deputy Project Manager informed Simpson he had sufficient basic TOWs to meet the order but that the TOWs needed the safety modification, which would add to the expense.[20]

Simpson set about pricing the TOWs in what seemed to be a logical manner—he checked the Army's catalogue of inventoried items, complete with national stock numbers and prices. Simpson found the price to be $3,169 for a basic TOW, to which he estimated an additional $300 for the safety modification—a total of $3,469 per missile. Simpson quoted that price to the CIA.[21]

There were, however, eight different models of TOWs listed in the catalogue. Unknown to Simpson, when safety modifications became a required feature, the Army created a new stock number for the basic TOW with the modification and a corresponding new, and much higher, price. Using the correct stock number, the Army should have provided the CIA a cost of $8,435 per missile.[22]

Although Simpson's testimony is inconsistent on the question of whether he was aware that the Army catalogue price for the basic TOW with modifications was $8,435, there are indications that some officials in the Army became aware of the erroneous price. The original paperwork providing for the transfer of the TOWs from their storage depot carried the correct price, $8,435, not the $3,469 price that Simpson had computed. As the TOWs traveled from the depot to Redstone Arsenal, the price was dropped from the accompanying documentation. By the time the CIA received the first shipment of missiles, the receipt reflected Simpson's price of $3,469. Indeed, while the transfer documents accompanying the first and third shipments from the Army and the CIA carried the Simpson price, the receipts for the second shipment did not reflect any price. Testimony from Army officials about the changing prices in these documents has been inconsistent and inconclusive.

Amid the pricing confusion, the CIA received a better missile than it had bargained for. While the Army had basic TOWs in stock, it did not have sufficient parts to perform the safety modification. It tried to sell the CIA a more expensive and later version of the TOW, the improved TOW, or "I-TOW," which did not require modification. However, the CIA would not pay more than the quoted price of $3,469. As a result, the Army had to alter the TOW package, selling the I-TOW launch motor with the basic TOW warhead, which produced a superior product.[23]

Army officials included in these pricing decisions have denied any intent to lower the price of the TOWs, and the Committees have found no evidence to the contrary. What is apparent, however, is that in fulfilling the CIA request for TOWs in early 1986, the Army bypassed its usual method of obtaining, pricing, and transferring weapons. The emphasis on keeping the transaction secret, even from those involved in the process, led to a significant pricing error, one that North exploited to the advantage of the Enterprise. Without this pricing error, there would have been a much smaller difference between the $10,000 per TOW Ghorbanifar was willing to pay and the actual cost of the TOWs—and the diverted profits to the Enterprise would have been minimal.

The London Meeting

Armed with a low, firm price for the TOWs, North, Secord, and Amiram Nir, an adviser to Israeli Prime Minister Shimon Peres, met with Ghorbanifar in London on January 22, their first meeting following the President's approval of the Finding. North expressed reservations about the operation, explaining that the United States desired a more moderate Iranian regime, a cessation of terrorism by Iran, and the return of the American hostages. In his notes of that date, North recorded a plan that included, in addition to TOWs and intelligence, the release of Hizballah prisoners held by the Southern Lebanon Army for hostages:

Phase I
A-Provide small piece of Intel
B-Iranian Govt will release $40M
C-$10M sent to (blank)
D-1000 TOWs, Basic Intel Package,

> Hizb[allah] Prisoners from [Southern Lebanon Army] = hostage release.[24]

North testified that he was dissatisfied with the notion of selling weapons to Iran until this meeting with Ghorbanifar.[25] North's stated reluctance is inconsistent with the testimony of Sporkin and others, who described North as a strong advocate for the plan and a leader in getting it adopted by the President.[26] Nevertheless, according to North, the inducement that caused him to embrace the plan was a suggestion by Ghorbanifar to divert profits from the arms sales to the Contra forces.

North described his conversation with Ghorbanifar during a lull in the London meetings:

> Mr. Ghorbanifar took me into the bathroom and Mr. Ghorbanifar suggested several incentives to make that February [TOW] transaction work, and the attractive incentive for me was the one he made that residuals could flow to support the Nicaraguan resistance. He made it point blank and he made it by my understanding with the full knowledge and acquiescence and support, if not the original idea of the Israeli intelligence services, the Israeli Government . . . I think you have seen it in my messages to my superiors, I was not entirely comfortable with the arrangements that had been worked in the summer of 1985 and in the autumn and winter of 1985. I made it very clear. I was after all the person who had the responsibility for coordinating our counterterrorist policy. I had written for the President's words, "We will not make concessions to terrorists." For the very first time in January, the whole idea of using U.S. weapons or U.S.-origin weapons or Israeli weapons that had been manufactured in the United States was made more palatable. I must confess to you that I thought using the Ayatollah's money to support the Nicaraguan resistance was the right idea and I must confess to you that I advocated that.[27]

The tape recording of that meeting does not reflect the private conversation which North described. Instead, it reveals that Ghorbanifar discussed assisting the Contras openly, in the presence of North, Nir, and Secord:

> GHORBANIFAR: "I think this is now, Ollie, the best chance because we never would have found such a good time, we never get such good money out of this. [Laughingly] We do everything. We do hostages free of charge; we do all terrorists free of charge; Central America for you free of charge; American business free of charge; [First Iranian Official] visit. Everything free."
>
> NORTH: "I would like to see, . . . some point this, uh, idea, and maybe, y'know, if there is some future opportunity for Central America. You know that there is a lot of Libyan, a lot of Libyan and Iranian activity with the Nicaraguans."[28]

McFarlane had been disgusted with Ghorbanifar's direct linkage of hostages to arms in the December 1985 London meeting. The trading was even more explicit in January 1986. The tape reflects that Ghorbanifar demanded that 100 prisoners held by the Southern Lebanon Army be released as part of the quid pro quo for the American hostages. When Nir explained that the Southern Lebanon Army held fewer than 50 prisoners, Ghorbanifar demanded that 50 be released even if more prisoners had to be taken in order to release that number.[29]

Poindexter declared that he first learned of the possibility of diverting arms sales proceeds from North in early February 1986. He said that following North's meetings in London, North briefed him on progress being made domestically by CIA and DOD in procuring TOW missiles. Poindexter recalled North casually mentioning, "Admiral, I think I have found a way that we can provide some funds to the democratic resistance [Contras] through funds that will accrue from the sale of arms to the Iranians." Poindexter claimed that he considered the diversion to be "a very good idea" that he approved orally after only a few minutes conversation.[30]

Poindexter stated that the diversion was merely an implementation of the President's policy and a decision Poindexter had authority to make without consulting the President. Nevertheless, Poindexter admitted knowing that public revelation of the diversion's approval by him would result in his leaving the Administration, although he said that he "probably underestimated" the effect public knowledge of the operation would eventually have on the Administration.[31] Poindexter stated that he made the diversion decision without consulting the President in order to give the President "deniability." He acknowledged, however, that he had never acted that way before and that he had a reputation for keeping his superiors informed.[32]

What had begun as an initiative to obtain the release of the American hostages had now assumed a second, inherently conflicting goal. The Finding set forth a policy of selling weapons in order to obtain the release of hostages and to secure an opening to Iran. Use of the arms sales to aid the Contras created an incentive to charge the highest price the Iranians would pay while selling the least expensive equipment, a policy unlikely to win Iranian confidence or the hostages' freedom.

On January 24, North prepared a sophisticated "notional timeline" for Poindexter under the name "Operation Recovery," which proposed the transfer of TOW missiles and intelligence information to Iran in exchange for the release of the American hostages.

"Operation Recovery" reflected the ambitions of the planners who recently met in London. An agreement was reached that the TOWs were to be shipped to Iran in four increments of 1,000 missiles, with an additional 508 TOWs delivered to Israel as replenishment for that country's stocks. On February 8, the Southern Lebanon Army was to release 25 Hizballah prisoners after Iran received the first 1,000 TOWs. On February 9, "all U.S. Hostages [were to be] released to the U.S./British or Swiss Embassy" and "a second group of Hizballah [was to be] released by [the Southern Lebanon Army]." The following day, as preparations were underway to deliver the second increment of TOWs to Iran, Hizballah was to release certain other hostages. The notional timeline also made reference to another ambition of the planners: "February 11, Khomeini steps down." Following this sequential release of prisoners for arms, the United States would deliver the final two increments of missiles. The last deliveries were to be in exchange for hostages of other nationalities and the recovery of hostage William Buckley's remains.[33]

Logistical arrangements for the TOW shipment soon began to materialize: North communicated with DC/NE about DOD pricing, and Secord evaluated technical requirements for the Southern Air Transport 707s for transporting the arms to Israel. On January 27, North received confirmation of a TOW price from DC/NE which covered the shipment of 1,000 TOW missiles: "$3,469 per item for all units—load out cost: for all costs: $3,700,000."[34]

On the evening of January 29 in the Old Executive Office Building, North held his first meeting of individuals involved in the Iran initiative: Noel Koch of DOD, Allen and DC/NE of CIA, and Richard Secord. DC/NE had thought he was the sole CIA contact in the NSC operation, but he learned at the meeting that another CIA officer, Allen, was already involved. The discussion turned to logistical requirements. The CIA was responsible for transporting the TOWs from domestic storage facilities to Kelly Air Force Base in Texas, where Secord would accept delivery and fly them via Southern Air Transport in two separate shipments to Israel. Secord would arrange for Southern Air Transport personnel to fly the cargoes on Israeli chartered aircraft from Tel Aviv to Bandar Abbas, Iran, as originally agreed with the Government of Iran.[35]

Both North and Secord described Secord's role as a "commercial cut-out." As North testified, Secord:

> . . . negotiat[ed] prices, delivery schedules, arrangements, and General Secord then became the person who went back and paid the Government of the United States, through the CIA, exactly what the Government of the United States wanted for the commodities that it provided . . . General Secord was an outside entity who had been established as an outside entity many, many months before in order to support the Nicaraguan resistance.[36]

DC/NE agreed with using Secord as the cut-out because "I wasn't particularly anxious for an Israeli Government entity to know what my account was." But DC/NE said that he did not know that using the "cut-out" created an opportunity for siphoning funds to unrelated projects.[37]

The February Shipment

In the delivery schedule agreed upon in the London meeting, North noted, "10 days from money - move TOWs." The same schedule indicated that a deposit of $10 million would occur on January 29.[38] The deposit was not made, and on January 31, DC/NE and Secord met with North to develop another schedule based on an anticipated bank transfer to the CIA account on February 4.[39] However, on that day, North jotted in his notes, "Gorba going to bank to make transaction tomorrow," indicating another delay in the transaction.[40]

On February 10, $1,850,000 was wire-transferred to the CIA Swiss account from the Enterprise's Credit Suisse account, Lake Resources. The following day, another $1,850,000 was wire-transferred to the CIA account "by the order of one of our clients" without further explanation or identification. CIA headquarters then arranged through the Treasury Department to pay $3,700,000 to DOD for 1,000 TOW missiles.[41]

On February 13, North sent a PROF note advising Poindexter of the transfer of 1,000 TOWs to Kelly Air Force Base. He also discussed the final arrangements for delivering arms in exchange for American hostages, who were expected to be released on February 23:

> Operation RESCUE is now under way. 1000 items are currently enroute from Anniston Alabama. Copp is enroute to Ben Gurion Apt [airport] to conduct final briefing for his flight crews who arrived today and commenced fam flights on the two Israelis 707s. All 1000 items will lift off from Kelly AFB at 1400 on Saturday. 500 will be delivered to Bandar Abbas to arrive at dawn on Monday. The meeting we had wanted to pass the second set of intel has now been slipped to Weds by Gorba. ** Second 500 will go to Bandar Abbas on Friday vice Thurs. ** If all goes according to plan, [the Southern Lebanon Army] will release 25 Hizballah shortly after ** hopefully on Friday. This will keep our schedule for releasing the Americans on for Sunday, Feb. 23. Something to pray for at church that day.[42]

The PROF note reviewed two aspects of the plan: first, that there would be a shipment of weapons to Iran prior to the release of any hostages; and second, that part of the plan included the release of 25 Hizballah prisoners held by the Southern Lebanon Army.

Possession of the 1,000 TOWs was transferred from DOD to CIA once DOD received notice that CIA had the money to cover the cost of the TOWs. Thereafter, on February 15 and 16, separate flights of Southern Air Transport aircraft departed Kelly Air Force Base, each carrying 500 TOWs to Tel Aviv. Upon arriving in Israel, the cargo was unloaded from the planes and stored by Israeli military officials for transshipping to Iran. On February 17, the first Israeli charter plane delivered 500 TOWs to Bandar Abbas. Before departing Iran, the aircraft was loaded with 17 I-HAWK missiles which had been rejected by Iranian Defense officials following the November 1985 shipment. The Israeli aircraft returned on the next day to Tel Aviv.[43]

That day, Secord transmitted a KL-43 message to North describing the delivery and noting a recent conversation with Ghorbanifar. North quickly prepared a memorandum for Poindexter:

> MEMORANDUM FOR JOHN M. POINDEXTER
>
> FROM: OLIVER L. NORTH
>
> SUBJECT: Operation Recovery
>
> The following is text of encrypted message from Copp at 0830 this morning:
>
> Aircraft returned safely to Ben Gurion this morning at 0730 EST. Seventeen missiles aboard. Gorba called one hour ago. [The Second Iranian Official] will head Iranian side of meeting in Germany along with five others. Iranians will provide all names after we give names and titles to them through Gorba . . . Iranians have asked for second delivery of 500 TOWs on Friday a.m. They say they will release all hostages, if repeat, if intelligence is good. They say we will get hostages Friday or Saturday. They envision a future meeting in Iran with us to consider next steps while we are delivering balance of TOWs (3,000). Gorba repeatedly stressed need for good current intelligence. . . .They want focus on current fighting. We have already rejected embassy as meeting site. . . .
>
> * * * *
>
> . . . Based on the above, the CIA (Clarridge) has been asked to produce documents identifying Adams as DIA [Defense Intelligence Agency] to avoid having Copp use his own passport. To date, CIA has refused to provide him with any alias documentation. Albert Hakim is VP of one of the European companies set up to handle aid to resistance movements. He is fluent in farsi and would need one time alias documentation as a DIA official.
>
> It is recognized that there is a significant problem with the intelligence issue in general. However, we appear to be much closer to a solution than earlier believed. [The Second Iranian Official's] attendance at the Frankfurt meeting tends to support our hope that this whole endeavor can succeed this week, if we *appear* to be forthcoming.
>
> *RECOMMENDATION*
>
> That you urge Director Casey to provide [intelligence] on Thursday in Frankfurt.[44]

Based on his meetings with Ghorbanifar, DC/NE understood that upon the delivery of 1,000 TOWs to Iran, all American hostages would be released. Sessions with Iranian delegates would follow, and these could lead to a strategic U.S.-Iran meeting in a neutral location. After the strategic meeting, the remaining 3,000 TOWs would be delivered.[45] All of these arrangements had been made using Ghorbanifar as the interlocutor. Despite having shipped 18 HAWK missiles and 1,004 TOWs, North and Secord had yet to meet an Iranian official. Rather, they had relied solely on Ghorbanifar to present the Iranian demands and to convey the U.S. response. The American understanding—that delivery of 1,000 TOWs would cause the release of all the hostages—was contrary to the advice of the CIA professionals. As Clair George later told these Committees: "Under no conditions would the Government of Iran ever allow all the hostages to be released . . . because the only leverage that those who held the hostages have is the hostages, so why would they give them up."[46]

The First Frankfurt Meeting

On February 19, 1986, the U.S. delegation arrived in Frankfurt, West Germany, for what was to be its first opportunity to meet with a representative of the Iranian Government. When the Second Iranian Official failed to appear, Ghorbanifar began to offer excuses for his absence. Nevertheless, North decided to return to the United States until the Second Iranian Official arrived in Frankfurt.[47]

Albert Hakim, Secord's associate, had joined the U.S. delegation from Geneva. Earlier in February, Secord had told Hakim that his translating skills would be required at a meeting with Ghorbanifar and an Iranian Government official. Hakim said that Ghorbanifar, when he learned of Hakim's participation, objected violently and branded Hakim "an enemy of the State." Hakim said he eventually joined the meeting in disguise and under the name "Ibrahim Ibrahim" without Ghorbanifar knowing his true identity.[48]

On the return trip to the United States from the aborted Frankfurt meeting, North announced that Hakim would be the translator because he distrusted Ghorbanifar. When DC/NE objected to the use of so many "outsiders" for a covert activity, North professed his trust in both Secord and Hakim and attested to their expertise. DC/NE later ordered a name trace on Hakim, which revealed allegations of illegal foreign sales of U.S. equipment.[49]

The Meeting With An Iranian Official

On February 25, the Second Iranian Official arrived in Frankfurt at the Airport Sheraton Hotel and the U.S. delegation promptly returned for the meeting. The first session with him "was a disaster."[50] Hakim said the discussion began to deteriorate when Ghorbanifar misled both the Iranian and the Americans in his translation of conversation. After several minutes of discussion, Hakim knew that the two sides were on "different frequencies," with little hope of successfully communicating. Ghorbanifar tried to placate both sides, even though their objectives were entirely different.[51]

DC/NE similarly noticed the different expectations each side had brought to the meeting. While the Second Iranian Official pressed for the purchase of a specific missile, North argued for an arrangement to gain the release of hostages:

> [T]he Iranian said . . .'Mr. Ghorbanifar has told me that you promised to deliver a lot of Phoenix missiles.' The Phoenix is an air-to-air missile. I had never heard that before, that Phoenix missiles had ever been raised. Colonel North said that he had never heard anything about Phoenix missiles.[52]

The delegations met again the following day in the Second Iranian Official's hotel suite at the Sheraton. The Iranian continued to argue for the purchase of Phoenix missiles, advising the Americans that if Phoenix missiles were made available, "then we will start on the hostages . . . you might not get them all immediately, but we will at least start on it." The parties eventually agreed that the delivery of 1,000 TOWs would be immediately followed by the release of "a couple of hostages." The remaining hostages would be released after a meeting among high-level officials at Kish Island off the coast of Iran. When the hostage "problem" was resolved, the United States would deliver the remaining 3,000 TOWs.[53]

Following the Frankfurt meeting, the Second Iranian Official asked Hakim to advise the President of the United States that "money was no problem" if certain weapons would be sold through him to Iran. Hakim attributed this bribe offer to the Iranian's ignorance that the accepted custom of "baksheesh," or kickbacks, in Iran did not apply in the United States. Hakim said that he and Secord found the offer of "baksheesh" to President Reagan to be quite amusing, but Hakim could not recall conveying the message to any Government official because Hakim never took the offer seriously.[54]

With their first meeting with the Second Iranian Official behind them, certain members of the NSC staff felt they had established formal communications with Iran. This line of communication consisted of the Second Iranian Official as the representative of Iran's government and Ghorbanifar as the intermediary for the two governments. Nir remained an active participant in the first channel proceedings, particularly in monitoring Ghorbanifar's activities.

The Second Installment Of TOWs Is Delivered

On February 27, North and DC/NE met with Casey, Poindexter, and George at the Old Executive Office Building to report on the meeting with the Second Iranian Official. They anticipated the imminent release of as many as two hostages and arrangement for a strategic Iran-U.S. conference. Ghorbanifar's unreliability, which had been noted by the Second Iranian Official as well as the Americans in Frankfurt, was discussed. DC/NE noted that Hakim telephoned the Iranian following the Frankfurt meeting in an attempt to exclude Ghorbanifar from future negotiations.[55]

DC/NE later complained to George about using Secord and Hakim as U.S. negotiators. DC/NE recommended replacing Hakim as a translator with George Cave, a former CIA officer still on contract with the Agency and whose knowledge of Iran and command of the Farsi language were well-known. In a second effort to remove "outsiders" from political negotiations, DC/NE urged George to propose that Secord be eliminated from any future meetings with Iranian officials.[56]

Also on February 27, Israeli charter aircraft delivered the second load of 500 TOW missiles from Tel Aviv to Bandar Abbas. Again, Secord coordinated the flight using a Southern Air Transport crew.[57] In a KL-43 message, Secord discussed a meeting he attended with Hakim, Ghorbanifar, and the Second Iranian Official after all other Frankfurt participants had departed. Secord revealed that, once again, a shipment of weapons would not gain the release of any hostages. Instead, a new condition—the meeting at Kish Island—would first have to be met:

> Met with Nir and Gorba this a.m. . . . Subsequently I met with the [Second Iranian Official] for about one hour. . . . the [Second Iranian Official] emphasized need for quick meeting at Kish and said he would possibly, repeat, possibly surprise us by getting some hostages released

> before meeting. . . . [S]uggest you make contingency plan to accommodate early release (i.e., as early as Sunday). So, bottom line is on to Kish ASAP to seize the potential opening now created. Regards, Richard.[58]

North reported on his Frankfurt meeting with the Second Iranian Official to McFarlane, who had remained interested in the arms sales initiative following his departure from the National Security Council in December 1985. McFarlane had agreed earlier to meet with Iranian Government officials at a designated location, possibly Kish Island. First, North assessed the meeting:

> Just returned last night from mtg w/[Second Iranian Official] in Frankfurt. If nothing else the meeting serves to emphasize the need for direct contact with these people rather than continue the process by which we deal through intermediaries like Gorbanifahr. . . .
>
> Throughout the session, Gorbanifahr intentionally distorted much of the translation and had to be corrected by our man on occasions so numerous that [Second Iranian Official] finally had Albert translate both ways. Assessment of mtg & agreement we reached as follows:—[Second Iranian Official] has authority to make his own decisions on matters of great import.—He does not have to check back w/Tehran on decisions take.—The govt. of Iran is terrified of a new Soviet threat.—They are seeking a rapprochment but are filled w/fear & mistrust.—All hostages will be released during rpt during the next meeting.—They want next mtg urgently and have suggested Qeshm Is. off Bandar Abbas.—They are less interested in Iran/Iraq war than we originally believed.—They want technical advice more than arms or intelligence.—Tech advice shd be on commercial & military maintenance—not mil tactics—They committed to end anti-U.S. terrorism.—They noted the problems of working thru intermediaries & prefer dir. contact-[the Second Iranian Official] noted that this was USG/GOI contact in more than 5yrs. Vy important—[the Second Iranian Official] recognizes risks to both sides - noted need for secrecy.—[the Second Iranian Official] stressed that there were new Sov. moves/threats that we were unaware of. While all of this could be so much smoke, I believe that we may well be on the verge of a major breakthrough—not only on the hostages/terrorism but on the relationship as a whole. We need only to go to this meeting which has no agenda other than to listen to each other to release the hostages and start the process. Have briefed both JMP and Casey—neither very enthusiastic despite [DC/NE] North summary along lines above. Believe that you shd be chartered to go early next wk or maybe this weekend—but don't know how to make this happen. Have not told JMP that this note is being sent. Help. Pls call on secure yr earliest convenience. Warm, but fatigued regards, North.[59]

McFarlane replied:

> Roger Ollie. Well done—if the world only knew how many times you have kept a semblance of integrity and gumption to US policy, they would make you Secretary of State. But they can't know and would complain if they did—such is the state of democracy in the late 20th century. But the mission was terribly promising. As you know I do not hold Gorbanifar in high regard and so am particularly glad to hear of [the Second Iranian Official's] apparent authority . . .[60]

That evening, North sent a message to McFarlane detailing his success in winning support for the continuation of the initiative:

> NOTE FROM: OLIVER NORTH
>
> Subject: Exchanges
>
> Since the missive of this morning, met w/Casey, JMP, [DC/NE], Clair George and all have now agreed to press on. Believe we are indeed headed in the right direction. Just finished lengthy sessions w/JMP he indicated that he has passed substance to you and has given me dates that you are not avail.
>
> Will endeavor to sched. mtg so that these do not conflict but noted to JMP that it was their call as to date of mtg. Just rec'd msg fm Secord via secure device we are using. [Second Iranian Official] has again reaffirmed that once we have set a date we shall have a very pleasant surprise. Dick [Secord] & I believe that they may be preparing to release one of the hostages early. Dick also indicated that yr counterpart at the mtg wd be Rafsanfani. Nice crowd you run with! God willing Shultz will buy onto this tomorrow when JMP brief him. With the grace of the good Lord and a little more hard work we will very soon have five AMCITS [American Citizens] home and be on our way to a much more positive relationship than one which barters TOWs for lives.
>
> I value our friendship and confidence very highly and did not mean to infer that you had revealed these exchanges. By asking that you not indicate some to JMP I was only informing that I had not told him anything of it so as not to compromise myself at a point in time when he needs to be absolutely certain that this can work. He is, as

> only you can know, under tremendous pressure on this matter and very concerned that it go according to plan. My part in this was easy compared to his. I only had to deal with our enemies. He has to deal with the cabinet. Many thanks for yr trust. Warm regards, North.[61]

McFarlane's reply records his impressions of the Cabinet level response to the initiative:

> No sweat GI. I just sent a separate note about not sharing with John because I had forgotten to put it in the other note. And I fully understand the narrow path he is trying to walk between those who want to go balls out for the wrong reasons (Regan) and those who don't want to do it at all (GPS and Cap). So play it any way you must. . . .[62]

As these messages make plain, within one month of the Finding's approval, the assumption behind that document had been discarded. The memorandum to the President accompanying the Finding had stated that the initiative was to terminate if the United States delivered 500 TOWs and no hostages were released. Yet, North and his colleagues continued to develop contact with the Iranian and hoped to meet on Kish Island while Americans were still held hostage.

In February, it was apparent that the hostage problem would not be resolved quickly. In mid-February, the United States had shipped 500 TOWs to Iran. The Second Iranian Official, however, did not attend the first scheduled meeting. Several days later, when he did meet with the Americans, he promised to release hostages only after a meeting among high-level officials at some unspecified time in the future. On that promise alone, the United States immediately sent an additional 500 TOWs to Iran.

The American participants could attribute the failure to obtain the release of any hostages after the November 1985 HAWK transaction to the Iranians' apparent anger over the outdated missiles they received. No similar justification could explain the lack of action by the Iranians after they received 1,000 TOWs. The Americans kept their part of the bargain and shipped the weapons; the Iranians broke their promise and delivered no hostages. Instead, the United States received only another promise, not of hostages, but of another meeting.

The Diversion Continues

The sale of the 1,000 TOWs was successful in one respect. The "attractive incentive" that North had seen in the arms sales materialized—profits to be used for the Contras.

The February TOW shipment had generated a $10 million payment to Secord. After Secord paid $3.7 million to the CIA's Swiss account, North discussed the use of residuals with Secord: "I described for General Secord the purposes to which I thought that money ought to be applied . . . . There were points in time when we discussed these activities. I had to tell him what the government was going to charge for various commodities, but ultimately the decision (pricing) was his."[63] North said that the purpose of the residuals was "to sustain the Iranian operation, to support the Nicaraguan resistance, to continue other activities which the Israelis very clearly wanted, and so did we, and to pay for a replacement for the original Israeli TOWs shipped in 1985."[64] The January 17 Finding, however, made no mention of support to the Contras or of other intelligence activities as goals of the covert action.

North said that residuals intended for the Contras were a small segment of a larger, comprehensive covert activity support plan. The decision on how to apply the residuals was stated by North: ". . . residuals from those transactions would be applied to support the Nicaraguan Resistance with the authority that I got from my superiors, Admiral Poindexter, with the concurrence of William J. Casey and, I thought at the time, the President of the United States."[65] Those superiors, according to North, also approved the use of Iranian arms sales proceeds to compensate Secord:

> The arrangement that I made with General Secord starting in 1984 recognized that those who were supporting our effort were certainly deserving of just and fair and reasonable compensation . . . . It was clearly indicated [by] Mr. McFarlane and Admiral Poindexter and in fact almost drawn up by Director Casey, how these would be outside the U.S. Government, and that I told them right from the very beginning that those things that he (Secord) did deserved fair and just compensation.[66]

Poindexter recalled no such authorization. Although he felt that Secord was deserving of "reasonable compensation," Poindexter testified that the subject "never came up." Poindexter was unaware of any particular profits Secord and others realized from the arms sales.[67]

North left further definition of "fair and just compensation" up to Secord. He claimed that he did not review the records of the Enterprise, rarely knew how much money had actually been transferred for the Contras, and never knew how much of the profits had gone to Secord and Hakim.[68] Secord and Poindexter also testified that they were unaware of Hakim's method of controlling the accounts.[69]

The Initiative Continues

Even though the sale of 1,000 TOWs had not produced a single hostage, the initiative went forward. But Nir became concerned that he would be excluded from further meetings and that Israeli interests would be ignored. Within days after the meeting with the Second Iranian Official in Frankfurt, Israeli Prime Minister Peres wrote to President Reagan summarizing the results of the Frankfurt meeting and discussing the next steps.[70]

The February decision to supply U.S. intelligence information to the Iranian delegation concerned CIA officials. The NSC staff forwarded to the CIA the Iranians' request for a map depicting Iraqi battle positions at its border with Iran. When CIA Deputy Director John McMahon learned of this request, he cabled Casey who was traveling overseas:

> 1. A new dimension has been added to this program as a result of meeting held in London between North and Ghorbanifar. We have been asked to provide a map depicting the order of battle on the Iran/Iraq border showing units. Troops, tanks, and what have you. . .
>
> * * * *
>
> 3. Everyone here at Headquarters advises against this operation not only because we feel the principal involved is a liar and has a record of deceit, but, secondly, we would be aiding and abetting the wrong people. I met with Poindexter this afternoon to appeal his direction that we provide this intelligence, pointing out not only the fragility in the ability of the principal to deliver, but also the fact that we were tilting in a direction which could cause the Iranians to have a successful offense against the Iraqis with cataclysmic results. I noted that providing defensive missiles was one thing but when we provide intelligence in the order of battle, we are giving the Iranians the wherewithal for offensive action.
>
> 4. Poindexter did not dispute our rationale or our analysis, but insisted that it was an opportunity that should be explored. He felt that by doing it in steps the most we could lose if it did not reach fulfillment would be 1,000 TOWs and a map of order of battle which is perishable anyway.
>
> * * * *
>
> 6. I have read the signed Finding dated 17 January 1986 which gives us the authority to do what the NSC is now asking. Hence, in spite of our counsel to the contrary, we are proceeding to follow out orders as so authorized in the finding.[71]

Casey did not order McMahon to do otherwise. Once again, concerns voiced by career officials at the CIA were brushed aside and the intelligence was provided.

As the Americans prepared for the trip to Kish Island, North received discouraging signals from Iran through Secord and Hakim. The Iranians were stalling on the meeting while pushing again for the purchase of Phoenix missiles. North's notebook on March 2 reflected, "Meeting w/Secord & Albert [Hakim]. Albert talked to [the Second Iranian Official] . . . situation is not right for meeting in Kish . . . [the Second Iranian Official] wants Phoenix [missiles]." North's response was, once again, to direct Nir to contact Ghorbanifar and urge him to "pull out all stops."[72]

By early March, career officials at the CIA were pressing their doubts that Ghorbanifar and his principals could deliver on their promises to free the hostages. Iran had not demonstrated any ability to gain release of hostages since early September 1985, nearly six months earlier. On March 7, DC/NE expressed his doubts in a memorandum to his supervisor, the Chief of the Near East Division in the Operation Directorate:

> Ghorbanifar insisted on another meeting after which the Keesh Island matter will be set. North is prepared to stonewall in Paris. There will be no more "slices of salami" handed out. However, our other friend, NEER [sic], will also be present. We sense strongly . . . that he is unilaterally providing additional arms as an incentive to the Keesh Island. I have briefed Ed Juchniewicz on the above. I tried to get into McMahon, but he did not have time. I will be back Saturday PM and will give you a ring. *What we may be facing is evidence that [the Second Iranian Official] does not have the authority in Tehran to make it work.*[73] [Emphasis added.]

Cave Joins the Team

By March 5, the CIA prevailed in its bid to have intelligence professional George Cave replace Hakim as the interpreter. At CIA Headquarters that day, Cave was briefed by DC/NE, George, and Allen. DC/NE asked Cave if he would travel to Tehran to translate during a meeting with the Iranian Speaker of Parliament, Rafsanjani. Cave had prior experience with Ghorbanifar and had been involved in the 1984 decision to issue a worldwide "burn notice" on him. Cave was appalled that a sensitive operation would depend so heavily on a man with a long record of self-serving lies and distortions. Cave was equally concerned that the Israelis had such a prominent role in the affair, because Israeli and American goals in the region were not always compatible.[74]

Nevertheless, Cave agreed to participate. He considered the initiative to be a high-risk operation and strongly recommended against the CIA involving "serving officers" in the operation. Cave noted that, as an annuitant, he avoided jeopardizing his career should the operation fail. Cave quickly replaced DC/NE as the CIA's operational "point man," reporting on his activities to DC/NE and "in many cases directly to Director Casey."[75]

North, DC/NE, and Cave flew to Paris on March 7 to meet with Ghorbanifar and Nir. Ghorbanifar told the Americans that the Second Iranian Official's internal political position had not been improved by the Frankfurt meeting. Upon examining their military stockpiles, Iranian military representatives felt that they needed no additional TOWs; instead, they wanted the Americans to sell them 240 types of spare parts to repair the HAWK missiles in Iran's stocks. Nir encouraged the U.S. delegation to pursue this avenue, contending that such a sale would result in the release of all American hostages.[76] Before concluding the Paris meeting, Ghorbanifar told the Americans that the Kish Island site was unacceptable to the Iranians, who would agree only to meet in Tehran.[77] The altered meeting site created further delays.

North's notes of the Paris meeting reflect fear that his channel to Iran might be seriously flawed. He commented that all prior effort focused on the purchase of arms rather than political change and that "we cannot verify that there is anyone else in G.O.Ir [Iran] aware or even interested in talking to USG."[78] In spite of these concerns, North continued to pursue the plan.

In a report for Casey after the Paris meeting, Cave addressed several points raised by Ghorbanifar during the meeting. The last paragraph set forth Ghorbanifar's suggestion to divert profits from the sale of arms to Iran to aid the Contras: "He also proposed that we use profits from these deals and others to fund [other operations]. We could do the same with Nicaragua."[79] Charles Allen read Cave's memorandum, but dismissed the statement as a typically expansive remark by Ghorbanifar.[80] Yet, this was not the first time that Allen had learned that Ghorbanifar was attempting to use North's interest in the Contras to "sweeten the pot" for the Americans. During a meeting between Allen and Ghorbanifar in January 1986, Ghorbanifar had mentioned the possibility of using monies generated from various projects to aid "Ollie's boys in Central America."[81]

New Doubts About Ghorbanifar

Several PROF notes between North and McFarlane indicated North's frustration following his Paris meeting with Ghorbanifar:

> Per request from your old friend Gorba, met w/ him in Paris on Saturday. He started w/a long speech re how we were trying to cut him out. How important he is to the process and how he cd deliver on the hostages if only we could sweeten the pot w/some little tidbits—like some arms, etc. After his speech I allowed as how he was not getting the message, but that I wd reiterate:
>
> —The hostages are a serious impediment to serious govt-to-govt discussions and this must be resolved before we can discuss any further transactions.—We remain ready to go to Kish or anywhere else to discuss issues of mutual concern as long as the hostages are going to be released during or before this meeting. . . .[82]

In a late-night response, McFarlane offered his opinion on continuing with Ghorbanifar:

> Gorba is basically a self-serving mischief maker. Of course the trouble is that as far as we know, so is the entire lot of those we are dealing with . . . . But it is going to take some time to get a feel for just who the players are on the contemporary scene in Teheran. So the sooner we get started the better.[83]

North's return PROF reveals that he was not optimistic that the initiative had reached Iranian officials who cared about anything other than arms sales and personal financial gain:

> In re the Gorba prob: He is aware of the Kish mtg and is basically carrying our water on the mtg since he is still the only access we have to the Iranian political leadership. It wd be useful, I believe, for you to talk w/George Cave, the Agency's Iran expert. He shares our concern that we may be dealing only w/those who have an interest in arms sales and their own personal financial gain and believes the "Russians are coming" approach is about the only way to broaden the perspective.[84]

The NSC staff had advocated arms sales as a way of creating an opening with Iran as well as obtaining the release of the hostages. By mid-March, though, arms sales by the United States had produced no hostages. Further, NSC staff members were not even sure they were dealing with anyone who was interested in a broader initiative.

Allen had also recommended continuing to work with Ghorbanifar on terrorism issues "regardless of whether we find his information at this stage credible."[85] Despite this concern, Allen argued that Ghorbanifar was the only channel available to Iran.[86] Secord commented that a new channel should be sought because the Ghorbanifar channel was "obviously flawed."[87] Cave's view of Ghorbanifar remained unchanged:

> The Israelis, particularly Nir, insisted on Ghorbanifar, for one thing. I was at the other end, insisting he couldn't be trusted. There were other people that felt you had to keep him in . . . because he would blow the whole thing. He was

> investing a lot of money in this operation, so that he had to be kept in it. I was more concerned that, knowing Ghorbanifar, that Ghorbanifar worked for Ghorbanifar, period, which is basically what we found when we got to Tehran.[88]

Ghorbanifar realized that the meeting between the Americans and the Second Iranian Official had rendered him superfluous. After the Frankfurt meeting in late February, Hakim had called the Iranian official to recommend that Ghorbanifar be bypassed in further negotiations. As a result, at the early March meeting in Paris, Ghorbanifar had continually emphasized to the Americans that he was essential, a position he would continually restate.

To placate Ghorbanifar, North invited him to Washington in late March. In a telephone call several days prior to Ghorbanifar's arrival, Nir told Allen of Ghorbanifar's concerns and advised that any attempt to eliminate Ghorbanifar from the negotiations was "unwise . . . because of the hold that [Ghorbanifar] has over the [Second Iranian Official]."[89]

While Nir was promoting Ghorbanifar to the CIA, Nir and North were discussing how to divide up the profits from the sale of HAWK spare parts. An entry in North's notebooks related a conversation with Nir: "price data on 240 . . . timing per acquisition . . . need to know residuals on—price per unit ($6068), price in Aaron's place, how much is left for use by Israelis."[90] "Aaron" was the code name for DOD official Noel Koch; "Aaron's place" was, presumably, the Pentagon. The conversation reflects the Israelis' desire to know how much of the residuals would be available to finance the Israelis' purchase of the 504 replacement TOWs.[91]

Ghorbanifar Visits Washington

On April 2, 1986, Ghorbanifar and an Israeli official met in London to discuss financial arrangements for shipping the HAWK spare parts.[92] Ghorbanifar flew to Washington the next day and met with the CIA Chief of the Near East Division (C/NE)* Cave, and North at a hotel in Herndon, Virginia. They discussed the availability of the HAWK spare parts on the list that Ghorbanifar had earlier supplied. CIA logistics personnel then attempted to locate the items, many of which were not in production or not available.

C/NE remembered Ghorbanifar saying that the Iranians had agreed to release all American hostages as soon as the U.S. delegation arrived in Tehran. Based on Ghorbanifar's prior performance, the CIA officers were skeptical.[93] Two days later, Cave drove Ghorbanifar to Dulles International Airport outside Washington. During the drive, Cave reminded Ghorbanifar that all hostages had to be released before any of the HAWK spare parts would be delivered. Cave said that Ghorbanifar "took the statement under advisement."[94]

Cave's report after the meeting shows that despite his contempt for Ghorbanifar, he hoped that the Iranian might yet deliver:

> we discussed the schedule in some detail. we proposed arriving about 7-8 days after the money is deposited. this would give us time to have the plane load of spares positioned in europe. we then haggled for hours about what was included and what would be negotiated in tehran. we stuck to our position that once the release takes place we would order plane to launch and it should arrive in bandar abbas with 8 hours. it would then turn around and bring in the rest of the spares. we are tentavilye [sic] committed to deliver the $3,000 volswagons [sic] [3,000 TOWs] about 30 days later. gorba pressed for new additions . . . gorba kept' insisting that we bring some of spares with us and we kept insisting that we wouldn't although a small sample is an option.
>
> * * * *
>
> 6. possibly the best indication that we might be getting somewhere is that towards the end, gorba began discussing his cut. goode [North] told him that he could add on whatever he thinks right for his cut to the final price. he said that he had spent 300,000 dollars already to grease the skids etc. it would appear that he now feels that the deal is entering its final stages.
>
> * * * *
>
> 8. gorba claims that the iranian side is devoting considerable time to this. the whole thing is being masterminded by rafsenjani behind the scenes . . .[95]

Following the April meeting with Ghorbanifar, North and Nir continued to discuss the arms sales and the use of the residuals. On April 7, North received an update on Nir's most recent contact with the Second Iranian Official and Ghorbanifar. Without further explanation, North jotted in his notebook on that date, "Merchant [Ghorbanifar] needs $1.5M from HAWKs." Nir commented that the Second Iranian Official did not trust Ghorbanifar and trusted the United States even less. Nir was still concerned that he might be left out of the negotiations. North noted: "Nir very upset that Israel might be 'cut out' of the Iran trip . . . very bad blood if cut out . . . If this deal falls through Israel will sell HAWK parts to finance (illegible)".[96] Israel remained concerned about how the replenishment of the 504 TOWs would be financed.

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*DC/NE was promoted in May 1986 and thereafter continued to participate in only a support role.

Planning The Tehran Mission

During March and April, U.S. planners considered dispatching an advance U.S. party to meet with Iranian officials equivalent to NSC staff representatives. Specifically, Casey, Poindexter, and others contemplated Cave and North traveling with Ghorbanifar to Iran in advance of the McFarlane visit. Even before the meeting had been moved from Kish Island to Tehran, Cave believed that an advance trip was a practical step. He pointed out, "With all my Iranian experience and my distrust for Ghorbanifar, I thought there was an awful lot of personal risk in us going in [to Tehran without an advance trip]."[97]

Secord later reflected that a trip without advance work was a mistake:

> It was strongly recommended by three of us—Nir, myself, and North—were all recommending that a preparatory meeting take place. There was, after all, as far as I knew, no agenda agreed to for this meeting (McFarlane's), and so it seemed to me at least—and I think to the others—to be not well organized. In fact, I have been to many, many international meetings, and I don't think I have ever been to one where there wasn't some preparatory work done in advance. However, the position was taken that there would be no advance preparatory meeting, that the terms and conditions that had been agreed to in Frankfurt were sufficient . . . and that the Iranian side would simply have to deal with that, and so there was no advance meeting and that was a big mistake.[98]

Poindexter ruled out the possibility of an advance trip by North and others, claiming "that was more dangerous and that if we had a more senior person there with the group that there was less risk to the whole group."[99] According to North, Poindexter's view was echoed by Director Casey, who argued:

> This advance trip is so hidden, we are going to use non-U.S. Government assets throughout, European or Middle Eastern airlines, no U.S. Air registration, air flights. You might never be heard from again. The Government might disavow the whole thing.[100]

North's Diversion Memorandum

Around April 4, 1986, North prepared an extensive report for Poindexter entitled "Release of American Hostages in Beirut."[101] In the memorandum, North summarized the Iran initiative, beginning with a June 1985 meeting between certain "private American and Israeli citizens." Under the report's subheading, "Current Situation," North detailed the agreement reached at the most recent meeting between Ghorbanifar and U.S. officials:

> Subject to Presidential approval, it was agreed to proceed as follows:
>
> —By Monday, April 7, the Iranian Government will transfer $17 million to an Israeli account in Switzerland. The Israelis will, in turn, transfer to a private U.S. corporation account in Switzerland the sum of $15 million.
>
> —On Tuesday, April 8 (or as soon as the transactions are verified), the private U.S. corporation will transfer $3.651 million to a CIA account in Swizterland. CIA will then transfer this sum to a covert Department of the Army account in the U.S.
>
> —On Wednesday, April 9, the CIA will commence procuring $3.651 million worth of HAWK missile parts (240 separate line items) and transferring these parts to [a CIA storage facility]. This process is estimated to take seven working days.[102]

The "Current Situation" section included a timetable that placed McFarlane and his team of negotiators in Tehran on April 19 to meet with Rafsanjani. It also forecast that all of the American hostages would be released sometime following sequential arms deliveries to Iran.[103]

Under a second subheading, "Discussion," North listed nine points to be discussed with the Iranian Government through Ghorbanifar. The ninth topic follows:

> —The residual funds from this transaction are allocated as follows:
>
> - $2 million will be used to purchase replacement TOWs for the original 508 sold by Israel to Iran for the release of Benjamin Weir. This is the only way that we have found to meet our commitment to replenish these stocks.
>
> -$12 million will be used to purchase critically needed supplies for the Nicaraguan Democratic Resistance Forces. This materiel is essential to cover shortages in resistance inventories resulting from their current offensives and Sandinista counter-attacks and to 'bridge' the period between now and when Congressionally-approved lethal assistance (beyond the $25 million in 'defensive' arms) can be delivered.[104]

The last page of the report contained a recommendation that the President approve the plan:

> That the President approve the structure depicted above under "Current Situation" and the Terms of Reference at Tab A.
>
> Approve--- Disapprove---

North transmitted a PROF message on April 7 to McFarlane stating that North had prepared the memorandum at Poindexter's request for "our boss":

> Met last week w/ Gorba to finalize arrangements for a mtg in Iran and release of hostages on or about 19 Apr. This was based on word that he had to deposit not less than $15M in appropriate acct. by close of banking tomorrow . . . Per request of JMP have prepared a paper for our boss which lays out arrangements. Gorba indicated that yr counterpart in the T. mtg wd be Rafsanjani. If all this comes to pass it shd be one hell of a show.[105]

During her testimony, Fawn Hall, North's secretary, expressed familiarity with the early April memorandum. She recalled typing it as North stood behind her and dictated.[106] She also believed that one of the drafts of this memorandum was edited by Poindexter and returned to her for typing correction.[107] She testified that Poindexter never suggested that the memorandum was improper in any fashion nor did he ever suggest the outlined policy not be pursued.[108] Further, Hall stated that her understanding of the phrase "our boss" in the April 7 PROF referred to President Reagan.[109] Poindexter testified that he did not recall seeing any memorandums discussing the diversion of funds to the Contras until the day before he resigned in late November 1986.[110]

In testifying about the diversion of funds, North stated that he believed his superiors had approved all his actions during the Iran initiative. He said that he may have written as many as five or six memorandums in which he asked for the President's approval for the diversion of profits from the sale of weapons to Iran. North explained that each of the memorandums was prepared for Presidential approval when a proposed sale of weapons to Iran neared its final stage.[111]

Even though North said he prepared "diversion" memorandums for five or six transactions, there were only three successful shipments of arms during the initiative: "It is my recollection I sent each one up the line, and that on the three where I had approval to proceed, I thought that I had received authority from the President." North stressed that, unlike other memorandums he had submitted for Presidential approval, he never saw a memorandum about diversion reflecting the President's initials in the "Approval" space. He denied receiving instructions from Poindexter to discontinue the drafting of such memorandums.[112]

North initially said that he could not recall Poindexter specifically asking him to prepare a "diversion" memorandum for the President's approval.[113] When shown his April 7 PROF message to McFarlane, however, North remembered that Poindexter requested drafting of the April memorandum about diversion. North also said that the words, "our boss," used in the PROF message was his phrase for the President.[114]

Poindexter's recollection differed sharply. He said that North first discussed with him the idea of using the proceeds of the arms sales to support the Contras in late January or early February 1986. He could not remember ever receiving a written memorandum calling for the President's approval and never directed North to prepare such a memorandum.[115] According to Poindexter, he directed North to put nothing in writing about the diversion,[116] a direction North denied receiving.[117] Poindexter admitted leading North to believe that the President had approved the plan, but he denied ever discussing it with the President.

Poindexter testified that his decision not to tell North that he had hidden the diversion from the President was risky in light of his "plausible deniability" plan. Without Poindexter's knowledge, North told both McFarlane and Casey about the diversion. North's associate, Robert Earl, also knew. Not knowing of Poindexter's supposed plan to give the President "plausible deniability," any of them may have spoken to the President about the diverted funding for the Contras.[118]

The diversion to the Contras was not the only use of funds that North had in mind in April. On April 15, he received a call from Nir about joint covert operations to be conducted by the Americans and the Israelis. According to North, the operations—named TH-1 and TH-2—were to be financed out of the proceeds of the arms sales. None of them progressed beyond the planning stages, but North was prepared to dedicate funds from the Enterprise to those covert operations.[119]

Complications

Around April 22, 1986, CIA officers reviewed information noting that Ghorbanifar complained bitterly of his arrest by Swiss police. Ghorbanifar had allegedly funded a transaction that violated certain U.S. Federal laws and was coordinated by Cyrus Hashemi, an Iranian arms dealer.[120] This incident was the first these CIA officers knew of a U.S. Customs "sting" operation targeting a group of individuals who had allegedly attempted to sell U.S. arms to Iran. Allen avoided discussing the subject with Ghorbanifar. However, Allen believed that the arrest would have little effect on the NSC operation:

> This was a separate activity. It was viewed as Mr. Ghorbanifar perhaps being involved in another financial deal. It appeared that he had other deals under way with a variety of elements. So the fact that he might have been involved in some form of arms transaction with Cyrus Hashemi certainly was not beyond question and we were not surprised.[121]

Pricing the HAWK Parts

Near the end of April, the CIA received authority from the NSC staff to forward 508 TOWs to Israel to replenish stock sent in 1985 to Iran. George Cave recalled that CIA costs for procurement, packaging, security, and transportation of the missiles, plus similar expenses for the 240 HAWK spare parts, boosted the Defense Department price to $6 million instead of the $4 million originally quoted by the CIA logistics office. Cave maintained that North was solely responsible for forwarding the DOD cost of the shipment to Nir. However, he denied knowing of North's involvement in suggesting a price to be charged Ghorbanifar or the Iranian Government.[122]

Cave denied knowing of pricing specifics for the 240 spare parts until after the Tehran trip, even though he routinely reviewed all reports regarding the initiative. Beginning in early April, it was reported that the Iranians were supposed to pay nearly five times the amount CIA was to receive for the 240 spare parts. On three separate occasions prior to the Tehran trip, reports reviewed by Cave specifically indicated that the Government of Iran was to pay Ghorbanifar $22,471,000 for "spare parts," for which the CIA later received approximately $4,500,000.[123] Yet Cave claimed that he was unaware that the transaction would yield a huge profit for the middlemen—Ghorbanifar and Secord.[124]

New Demands

In late April and early May, Allen continued to communicate with Ghorbanifar to gauge any changes in Iran's position on the long-promised meeting in Tehran. Following the February delivery of 1,000 TOWs, the Second Iranian Official had promised that the hostages would be released if the Americans agreed to a meeting with top-level Iranian officials. By mid-April, the requirement of a sale of HAWK spare parts was added. On April 14, Ghorbanifar called Allen with new demands. In that conversation, Ghorbanifar relayed an Iranian proposal for the sequential release of hostages following the arrival of the Americans in Tehran and the delivery of the spare parts. The Iranians were withdrawing their original promise to release the American hostages upon the arrival of the American delegation and instead demanded additional arms sales. During his conversation with Allen, Ghorbanifar recommended that North reject the Iranian proposal.[125]

The following day, Allen prepared a memorandum outlining what he perceived to be obstacles in the initiative and his own recommendations. Allen recognized that unless the United States was willing to provide additional weapons, it had no alternative but to wait, a decision that would lead to "additional hostages and threat of exposure." He cautioned, "Every day that passes, raises the risk of embarrassing disclosures." Allen also suggested "sweetening the pot" by an act of U.S. omission, that is, permitting the Israelis to become an arms supplier to Iran, a position the Israelis were "anxious" to take because "they would like to see Iran prevail."[126] Allen recognized that without a sweetener, the Iranians had little motivation to fulfill their bargain to release the hostages.

Poindexter responded sharply to the new Iranian proposal, purporting to communicate the President's own frustrations with the operation. In a PROF message to North written shortly before a meeting in Frankfurt among North, Cave, Nir, Ghorbanifar, and the Second Iranian Official, Poindexter issued North specific instructions:

> You may go ahead and go [to the meeting in Frankfurt], but I want several points made clear to them. There are not to be any parts delivered until all the hostages are free in accordance with the plan that you layed (sic) out for me before. None of this half shipment before any are released crap. It is either all or nothing. Also you may tell them that the President is getting very annoyed at their continual stalling. He will not agree to any more changes in the plan. Either they agree finally on the arrangements that have been discussed or we are going to permanently cut off all contact. If they really want to save their asses from the Soviets, they should get on board. I am beginning to suspect that [the Second Iranian Official] doesn't have such authority.[127]

Poindexter later sent a similar note to McFarlane, who was still awaiting his trip to Tehran:

> Here is the update we discussed on Saturday. [The Second Iranian Official] wants all of the parts delivered before the hostages are released. I have told Ollie that we can not do that. The sequence has to be 1) meeting; 2) release of hostages; 3) delivery of HAWK parts. The President is getting quite discouraged by this effort.
>
> This will be our last attempt to make a deal with the Iranians. Next step is a Frankfurt meeting with Gorba, [The Second Iranian Official], North and Cave. Sorry for the uncertainty.[128]

McFarlane agreed: "Roger John. Your firmness against the recurrent attempts to up the ante is correct. Wait them out; they will come around. I will be flexible."[129]

The Israelis also came to believe that the Ghorbanifar channel might be doomed. Secord conveyed this message to North: "I talked to Adam [Nir] this a.m. He [is] quite pessimistic re Gorba/[Second Iranian Official] cabal. He know[s] time is nearly over."[130]

In mid-April, North wrote in his notebooks that he had received "1st acknowledgement that Iranians are committed."[131] While this encouraged North, it suggested that the American demands would not be met. In light of Poindexter's concern that the Second Iranian Official might lack sufficient authority, the Americans could not be certain that the Iranian delegation would be able to secure the release of the hostages.

Allen's April 15 memorandum noted that one of Ghorbanifar's efforts to have the Americans "sweeten the pot" for Iran included the sale to Iran of two U.S.-made radar systems. Even though the radars were a subject of prior negotiations, North had treated them as separate from the spare parts sale. In a PROF note on April 29, North sought Poindexter's approval to sell the radars during the upcoming Frankfurt meeting. In the process, North pressured Poindexter for an immediate decision on this additional concession to the Iranian demands.[132]

On May 2, Nir telephoned Allen to discuss his most recent contact with Ghorbanifar. Nir stated that he had advised Ghorbanifar of the U.S. desire to proceed to Tehran without a preliminary meeting. Nir told Allen that in his opinion it was essential for both sides to have complete assurance regarding the "terms of the arrangements" prior to the primary meeting.[133] With no advance meeting, the Americans would have to rely even more heavily upon Ghorbanifar as an intermediary.

In contrast to North, Allen was pessimistic about progress made by the Second Iranian Official and Ghorbanifar toward the release of American hostages. In a formal memorandum to Casey on May 5, Allen detailed his interpretation of events in Iran:

> 1. [Most recent information] suggests that the White House initiative to secure release of American hostages in Lebanon remains dead in the water. We surmise . . . that [the Second Iranian Official] is unable to provide the assurances and to make the arrangements demanded by our side. Ghorbanifar has not deposited the funds necessary to move the spare parts.
>
> 2. We believe that the Iranian government has not been able to convince the holders of the hostages to release them to Iranian custody. This belief is fortified by the experience of [another government]. Ghorbanifar's failure to deposit the necessary funds indicates that he has doubts about [the Second Iranian Official's] ability to obtain the release of the hostages. Ghorbanifar is in a bind and he knows that once he deposits the money he cannot get it back. He also is aware that we have insisted that the spare parts will [be] delivered eight hours after the release of the hostages and only after the release of the hostages.[134]

Allen's memo must have been alarming. He questioned whether the Iranian Government had the ability to convince those who held the hostages to release them. In doing so, he cited the experience of another government. Although it is clear that U.S. officials were increasingly concerned with the Iranian government's inability to release the hostages, there is no indication that this concern was communicated to the President.

The State Department Hears Rumors

While North and CIA operatives were wrestling with details of the meetings and hostage exchange, other U.S. Government officials were conferring about the broader goals and policy. On February 28, Poindexter had briefed Secretary of State George Shultz on the hostage situation. Poindexter told Shultz that the Iranians "wanted a high-level meeting, and if there were a proper high-level meeting discussing our future relationships, that would be the occasion in which the hostages would be released."[135] Poindexter said that the White House had selected Robert McFarlane to conduct the high-level meeting.[136] Secretary Shultz responded that although the Iranian position "sounds almost too good to be true," he would favor the meeting, providing McFarlane acted under written instructions. Secretary Shultz was subsequently shown such written instructions (or "terms of reference"), which he "thought were fine" because they mentioned arms sales as only a future prospect, in the event of a new relationship between the United States and Iran, an "end to the Iran-Iraq war and an end to terrorism coming from Iran and so on."[137]

Poindexter did not inform Secretary Shultz that the agenda for the proposed meeting between McFarlane and the Iranians would include current deliveries of U.S. arms; and the written instructions reinforced Secretary Shultz's view that the meeting would include no such agenda.[138] Poindexter also did not tell the Secretary that only one day before their conversation the United States had completed a shipment of 1,000 TOWs to Iran.

By March 11, Poindexter called Secretary Shultz and told him that the proposed high-level meeting "was off" as was the Iran initiative itself.[139] Yet, an event in London among a group of international arms dealers 2 months later showed that the meeting and the initiative were very much "on" and that Poindexter had been less than truthful with the Secretary.

In early May, Saudi businessman Adnan Khashoggi, Nir and Ghorbanifar met with Tiny Rowlands, a British entrepreneur, and sought to enlist him in a plan to sell arms and other materials to Iran, a plan they maintained had been endorsed by the U.S. Government. According to Rowlands, Nir described a program to transfer large amounts of grain, military spare parts, and weapons to Iran. Nir proposed that Rowland's company, Lonrho, serve as an umbrella for managing future sales to Iran. Khashoggi exhibited receipts of large-scale transfers of cash to Swiss banks, indicating that large amounts of money were involved in the transaction. Moreover, in attempting to recruit Rowlands, Nir and Khashoggi told him that not only were a number of businessmen already involved in the deals, but also that the sales "had been cleared with the White House" and that Poindexter was the "point man." Rowlands learned that "only four people in the U.S. Government are knowledgeable about the plan [and that] the State Department [had] been cut out."[140]

Following this meeting, Rowlands reported what had transpired to a U.S. Embassy official in London, and Ambassador Charles H. Price was promptly informed. The Ambassador reported the incident to Under Secretary of State Michael Armacost, and later briefed Poindexter by secure phone in Tokyo, where Poindexter was attending the economic summit.[141] Poindexter acknowledged "a shred of truth" in Nir's allegation of White House involvement in the plan but contended that the involvement was minimal and that, in effect, Nir was "up to his own games." Poindexter told Ambassador Price that the U.S. Government had become involved the previous year when it "caught the Israelis red-handed delivering arms to Iran." He maintained that the story Price had heard was "all out of perspective" and advised that Rowlands be told to stay out of the plan. Poindexter assured Ambassador Price that he would "put things back the way they should be."[142]

The same day, Secretary Shultz, who was also attending the economic summit, received a cable from Armacost which detailed the Rowlands information. Shultz "expressed strong opposition on legal and moral grounds, as well as concern for the President" and the potential damage to his credibility that would result from exposure of the plan.[143]

Upon receiving the cable, Shultz immediately sought out Poindexter. Unable to find him, he confronted White House Chief of Staff Donald Regan and objected strongly to any such plan going foward.[144] Regan expressed alarm and promised to raise the matter with the President.[145] When Secretary Shultz found Poindexter, Poindexter denied any U.S. Government involvement in the deal, saying, "We are not dealing with these people. This is not our deal." Poindexter further said he had informed Ambassador Price that there was "only a smidgen of truth" in the report he had heard from Tiny Rowlands.[146] Regan later reported to Secretary Shultz that the President became upset when learning of the matter. As a result, the Secretary concluded that whatever transaction had been discussed with Rowlands, "this is not our deal," meaning that "the representations [that] this is something that has been explicitly endorsed by the U.S. Government were wrong."[147]

When Poindexter denied to Secretary Shultz that the United States was selling arms to Iran, he avoided telling the Secretary of State that McFarlane's proposed meeting with "high level" Iranians had been rescheduled for Tehran. Neither did he mention that plans for the meeting were rather well-advanced, nor that it would include a shipment of HAWK spare parts.[148]

On the same day that Armacost cabled Secretary Shultz, Poindexter sent a PROF message to North, informing him of Ambassador Price's phone call about the Rowland-Nir-Ghorbanifar-Khashoggi meeting. Poindexter blasted Nir, telling North, "We really can't trust those SOB's."[149]

In his reply to Poindexter, North agreed, "We cannot trust anyone in this game." North recalled that he had briefed Poindexter a year before on efforts to get Rowlands involved. At that time, Rowlands had reported back to Casey that the entire matter "smelled very badly."[150] North then informed Poindexter that the story he had heard from Ambassador Price was "the one made up by Nir to cover the transaction" and that it had been reported to North a few weeks before by Clair George. North concluded, as a result of the disclosure by Ambassador Price, that the "bottom line" was that "this typifies the need to proceed urgently to conclude this phase of the operation before there are further revelations. We all know that this has gone on too long and we do not seem to have any means of expediting the process short of going to Iran."[151]

As these events occurred, North was preparing to meet Ghorbanifar in London. On May 5, 1986, the day after Poindexter told Secretary Shultz there was no truth to the report from the U.S. Embassy in London, Poindexter ordered North not to let anyone know he was going to London and not to have any contact with the U.S. Embassy there.[152] In reply to a May 17 PROF note from North questioning whether Secretaries Shultz and Weinberger and Director Casey should be involved in a "quiet meeting" with the President and McFarlane before McFarlane's trip to Tehran, Poindexter stated that he did not want such a meeting.[153] By that decision, Poindexter ensured that Secretary Shultz would remain in the dark about the Tehran mission, and that McFarlane would fly to Iran for an expected high-level meeting with the Iranians without any consultation with the Secretary of State.

Another Meeting In London

On May 6, North, Nir, Cave, and Ghorbanifar met at the Churchill Hotel, London. The meeting focused on pricing of the spare parts shipment. Cave denied discussing the issue, noting that North, Nir, and Ghorbanifar were always careful to exclude him from such conversations.[154]

In discussing the upcoming meetings in Tehran, Ghorbanifar named Iranian Government representatives whom the Second Iranian Official said would meet the American delegation: Prime Minister Musavi, Speaker Rafsanjani, and President Khameni, with a possible visit by the Imam's son, Ahmed Khomeini.[155]

Cave had his first telephone conversation with the Second Iranian Official while he was in London. He described a "major snag" that arose regarding the sequence of the spare parts delivery. The Second Iranian Official was allegedly adamant that all the parts be delivered simultaneously with the arrival of McFarlane in Tehran. The Second Iranian Official finally agreed that when the American delegation arrived in Tehran with as many spare parts as the aircraft could hold, an Iranian delegation would be dispatched to Lebanon to barter for the release of the hostages. When the hostages were released, the remaining spare parts were to be delivered. An Israeli present during the meeting later confirmed this agreement.[156]

Once again, the American position had slipped. Poindexter's firm resolve only weeks earlier to refuse to deliver any parts until the hostages were released had eroded. The Iranians were insisting on complete delivery and the American negotiators began to relent.[157]

North recorded many details of the London negotiation, and his notes reflect the pricing of both the spare parts and the radars. The first set of figures came from pricing suggestions by Nir, North, and Ghorbanifar:

Total cost of 236 parts

235 Items
209 fully supported
14 partially supported
5 not avail
5 can't I.D.
2 never (illegible)/disc(ontinued)
225 delivered
Cost = $13,415,876.00
Radars = $9,652,500.00
Packing/Handling = $433,725.00
Misc. xport(radars) = 37,500
C-141 to Eur.(Radars) $104,300.00
$23,663,911.00[158]

The second set of figures reflected the DOD cost of the same materials:

RADARS

$6,177,600 for two radars
22,884 testing/eval
100,000 P/C/H/I
78,000 trans via C-141
$6,299,984 COST $6,3

240 PARTS:	4,182,923.40
P/C/H	146,000
Trans	8,000
	$4,377,426
TOWs	$1,762,252
Trans	7,500
Overrun	241,011
	$2,010,763
Grand Total to CIA	$12,688,173.00[159]

Cave Becomes Concerned About Pricing

Several days following the London meeting, Cave received information that he claimed was the first time he had heard of price manipulation by Ghorbanifar. Cave recalled his shock when he learned of Ghorbanifar's exorbitant price. Concerned that such pricing could jeopardize the operation, Cave approached North. Cave said that North expressed alarm at the price and may have indicated that he would speak to Nir about it.[160]

According to Cave, Ghorbanifar's pricing of the May shipment was confusing. During the May meeting in London, Ghorbanifar complained about having spent $1 million of his own money to support the NSC operation. This complaint, coupled with CIA's knowledge of Ghorbanifar's legal concerns following his arrest and probable loss of funds through the U.S. Customs "sting" operation, caused some CIA participants to conclude that Ghorbanifar was simply trying to raise as much money as possible from the transaction.[161] C/NE rationalized that the price of the radars, an additional $6.2 million, could have accounted for the inflated figure. According to their testimony, neither C/NE, Cave, nor Allen associated the inflated price with an effort by North and others to obtain profits in support of Contra activities.

During March and April the intelligence information gathered on the initiative was available to a restricted group at the CIA. Cave routinely examined the information, which was controlled by National Intelligence Officer Charles Allen. Casey, Gates, Clair George, C/NE, and the Chief/Iran Branch were among others to whom the intelligence reports were disseminated.[162] At least three reports showed that the Iranians were paying an exorbitant price for the spare parts. Information showed an attempt by the Second Iranian Official and Ghorbanifar to raise $21 million to purchase the two radars and over $20 million for the spare parts. Seven highly placed CIA officials thus had access to information that showed a huge mark up in the price of the spare parts and radar shipments. Yet all of them denied suspecting a diversion of funds until much later.

The Meeting Is Set

By May 6, North told Poindexter that he had achieved what Poindexter demanded—all hostages would be released before the parts were delivered. He reported this to Poindexter in a hopeful PROF note:

> I believe we have succeeded. Deposit being made tomorrow (today is a bank holiday in Switzerland). Release of hostages set for 19 May in sequence you have specified. Specific date to be determined by how quickly we can assemble requisite parts. Thank God—he answers prayers. V/R, North.[163]

Following the London meeting, North and North's deputy, Robert Earl, met with Clair George, C/NE, and Cave of the CIA to review the status of the initiative. From that meeting, North produced a memorandum setting forth the unresolved issues. The memo specifically noted that Clair George "wanted to ensure that Secretary Weinberger, Casey, and Secretary Shultz would all be briefed on the project."[164]

As a first step in moving the HAWK parts, Secord was to receive $15 million in Iranian funds. Only then would Secord transfer Enterprise funds to the CIA and begin acquiring parts. But Ghorbanifar had difficulty in transferring the money. Instead of receiving $15 million in deposit, Secord had to settle for $10 million as the first step. Secord sent a KL-43 message to North on May 14:

> 1. We have just received 10M in the lake via a contorted process but our lawyer says it is good and he is now moving it out of the lake to another acct. Still no sign of the remaining 5M but I assume it is enroute.
>
> 2. I will advise Adam ASAP. . . .[165]

On May 12, C/NE had advised the CIA Office of Finance that they should expect a deposit of $13 million to the CIA account in Switzerland. The deposit would allow the CIA to purchase the 240 HAWK spare parts and two radars from DOD.[166] Two days later, C/NE changed the amount the Office of Finance should expect to $10 million. Finally, on May 16, 1986, the CIA Swiss account received a deposit of $6.5 million from "Hyde Park Square."[167] C/NE advised North of the deposit and recalled North's comments: "Yes, 6.5. is in and the remaining 6.5 is going to come later [for the radars]."[168] Iranian funds were never sent for the radars. Additionally, C/NE was not certain of arrangements to pay for the 508 TOWs and had assumed that the Israeli Government handled that expense in a separate transaction.[169]

The National Security Planning Group Meeting

Also on May 16, Poindexter and North attended a National Security Planning Group meeting chaired by the President. They discussed soliciting financial support from third countries to support the Nicaraguan Resistance. Poindexter recalled that Secretary of State Shultz said that Congress would probably not renew funding for the Contras as early as Administration officials had hoped. To develop "bridge funding" for the Contras, Poindexter asked Secretary Shultz to prepare a list of countries for the President to consider for solicitation.[170]

Following the meeting, Poindexter received a PROF message from North declaring, "There is now $6M available to the resistance forces."[171] This message was sent the same day one of the Enterprise's Swiss accounts received a deposit toward the purchase of spare parts. Poindexter testified that he understood the $6 million had come from the diversion;[172] however, the National Security Adviser claimed he did not tell the President of the sudden availability of "bridge funds." Generally, according to Poindexter, when opportunities arose for him to discuss the diversion with President Reagan, he avoided doing so in order to permit the President to be able to deny knowledge of the issue. Poindexter claimed that he never volunteered to the President that diverted funds were available to "bridge" the Contra financial requirements.[173]

Final Planning for Tehran

With the 1-week delay in receiving the deposit from Ghorbanifar, participants in the initiative adjusted their schedules. North notified Poindexter on May 17 of travel plans for the Americans going to Tel Aviv and Tehran. Additionally, he requested a military aircraft for the trip to Israel and a last-minute meeting among McFarlane, the President, Casey, Shultz, and Weinberger.[174] Poindexter opposed both ideas:

> I have problems with this plan. An A/C request is too closely linked to what is happening. I don't see how we can use a military A/C. Why do you have to stay so long in Israel? I had in mind you would travel separately, rdvu[rendezvous] in Israel at a covert location, and proceed to Iran. I don't want a meeting with RR, Shultz, and Weinberger.[175]

North's reply was a comprehensive schedule of events that detailed the American travel itinerary with the commercial delivery of military materials for Iran. Even though the delegation's flight arrangements were later altered, the military arms were shipped as noted below:

Thursday: May 22

1000 - 240 items + 508 TOWs moved . . . to Kelly AFB by CIA
1100 - Commercial 707 (#1) arrives Kelly to load most of 240 items
1700 - Commercial 707 (#1) Dep Kelly for Israel w/bulk of 240 items aboard

Friday: May 23

1400 - Commercial 707 (#2) Dep Kelly AFB w/ 508 TOWs for IDF [Israeli Defense Force] enr Israel
1400 - Commercial 707 (#1) Arr Israel w/bulk of 240 items; commence xfr to IAF 707s prior to commencement of Sabbath

Saturday: May 24

1700 - Commercial 707 (#2) Arrives w/508 TOWs & remainder of 240 items; complete xfr of 240 items to IAF 707s after sunset (end of Sabbath)
2200 - bulk of 240 items transloaded fm Commercial 707 (#2) to IAF 707 (#B)[176]

The final travel itinerary was eventually outlined by North. After Poindexter asked North to consider using a CIA proprietary for a segment of the flight to Israel, North responded that he would make arrangements that did not include military aircraft. His final recommendation included the use of a Democracy, Inc. aircraft to fly the delegation to Rhein Main, Germany.[177]

On May 22, a Southern Air Transport 707 airplane delivered 13 pallets of HAWK missile spare parts to Israel. The following day, Southern Air Transport flight crews arrived in Israel for the trips to Tehran.[178]

On May 24, a second 707 arrived in Israel with 508 TOW missiles to replace the Israeli arms issued to Iran in 1985. After an examination by Israeli Defense Force personnel, the weapons were judged to be in "poor condition" and were rejected.[179] One pallet of HAWK parts and the Tehran delegation departed on May 25 aboard a disguised Israeli Government aircraft. Another Israeli plane loaded with the remaining 12 pallets of HAWK spare parts was ready for immediate departure to Tehran.[180]

U.S. War Readiness Suffers

The CIA obtained the 13 pallets of HAWK missile spare parts using much the same procedures employed to obtain the TOWs a few months earlier. Once again, the usual method of dealing with CIA requests for weapons from DOD was ignored. Bypassing the system in February created a large enough pricing error to make the diversion of excess profits feasible. Bypassing the system in obtaining the HAWK spare parts was equally serious, this time affecting U.S. war readiness.

When the Army received from the CIA the list of HAWK spare parts the Iranians were demanding, Major Simpson began to fill the order. But the Iranians had prepared the list using outdated documents and obsolete stock numbers, making it difficult for the Army to identify the parts; indeed, HAWK Project officials could not identify 11 of the items on the list.

Out of 148 items, only 99 existed in the Army's stocks in sufficient quantities such that the transfer to Iran would have no readiness impact.[181] In the case of 15 items, Army stocks would be completely depleted if the Army provided all quantities requested. Supplying 11 items would have depleted more than half the available stocks.[182]

Simpson was able to adjust the quantities on many of the items requested. On April 23, however, he instructed his subordinates to ship all of the items on the revised list.[183] Readiness impact remained critical for 10 to 12 of the parts.[184] The parts were ordered to be shipped even though U.S. HAWK missile batteries would be deficient if they were needed.[185]

The availability of one part was particularly acute. The Iranians had requested a quantity of one particular part used in the HAWK radar. If the part fails, the system does not work; if there are no replacements, the system remains useless.[186] The Army had only a limited supply of this part. Shipping the parts would put the readiness impact in the "high risk" category. Simpson protested to his superiors that the Army's stock of this part could not be depleted. The CIA insisted on delivery, and all of the parts were shipped.[187] U.S. readiness was thus adversely affected.[188]

Conclusion

The President's decision to sign the Finding in mid-January 1986 carried with it a decision not to notify Congress of the covert operation. As the participants recalled, the scheme contemplated a quick sale of weapons and an immediate release of all the hostages. Indeed, the memorandum accompanying the Presidential Finding provided that the initiative would be closed down if the hostages were not released after the first 1,000 TOWs were sold.[189]

By the end of May, the Americans had seen one pledge after another evaporate. When the first sales took place in mid-February they were not followed by a hostage release. Iran was subsequently rewarded with the promise of the sale of HAWK parts, but the Americans insisted that all the hostages first had to be released. That American demand was abandoned as well, however, as the McFarlane delegation prepared for their trip to Tehran in an airplane containing a quantity of HAWK spare parts.

While freedom for American hostages had not materialized, a funding mechanism to support various clandestine programs was flourishing. By the time McFarlane and North were preparing for their journey to Tehran, part of the profits obtained from the sale to Iran of both the TOW missiles and the HAWK spare parts had been diverted to support the Nicaraguan Resistance movement. The remainder of the profits were stored in secret Swiss bank accounts to support "off-the-shelf" clandestine operations.

Chapter 12

1. DC/NE Dep., 4/22/87, at 74–75.
2. *Id.*, at 82.
3. George Test., Hearings 100-11, 8/6/87, at 102.
4. *Id.*, at 109.
5. *Id.*, at 110.
6. *Id.*, at 146.
7. *Id.*, at 154.
8. DC/NE Dep., 4/22/87, at 83.
9. *Id.* CIA finance officers noted that deposits to the CIA accounts always originated from the Department of the Treasury or other Federal agencies. The officers claimed that, to their knowledge, the financial process established for the Iran initiative marked the first occasion in which funds were accepted by the Agency from a private source. Interview, CIA Finance Officers, 3/26/87.
10. DC/NE Dep., 4/22/87, at 84.
11. *Id.*, at 102-103.
12. Interview with CIA logistic officer, 6/15/87.
13. North, Personal Notes, 1/21/86.
14. Thurman Dep., 6/12/87, at 6.
15. The United States thought that Israel had shipped 508 TOWs the previous September. Because of packing requirements, only 504 had actually been shipped.
16. Thurman Dep., 6/12/87, at 11-12.
17. McDonald Dep., 8/14/87, at 30.
18. *Id.*, at 11.
19. Simpson Dep., 6/1/87, at 70-71.
20. *Id.*, at 70, 73.
21. *Id.*, at 74.
22. Coward Dep., 8/10/87, at 13, 21. Simpson Dep., at 10.
23. Simpson Dep., 6/1/87, at 90-93, 97-99.
24. North, Personal Notes, 1/22/86.
25. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 107.
26. Sporkin Test., *Hearings*, 100-6, 6/24/87, at 140-142.
27. North Test., *Hearings*, 100-7, Part I at 106-107.
28. Oliver North Tape Recording, 1/22/86.
29. *Id.*
30. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 36.
31. Poindexter Dep., 5/2/87, at 179-80.
32. *Id.* See Chapter 15 for a full description of the Diversion.
33. Ex. DRC-15, *Hearings*, 100-11.
34. North Personal Notes, 1/27/86.
35. DC/NE Dep., 4/22/87, at 91-92.
36. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 113-14.
37. DC/NE Dep., 4/22/87, at 104.
38. North, Personal Notes, 1/22/86.
39. *Id.*, 1/31/86.
40. *Id.*, 2/5/86.
41. Interview with CIA Finance Officers, 3/17/87.
42. North PROF Note, 2/13/86.
43. Secord Test., *Hearings*, 100-1, 5/7/87, at 106.
44. N9884, 2/18/86.
45. DC/NE Dep., 4/22/87, at 110.
46. George Test., *Hearings*, 100-11, 8/6/87, at 70-71.
47. DC/NE Dep., 4/22/87, at 111.
48. Hakim Test., *Hearings*, 100-5, 4/3/87, at 225.
49. DC/NE Dep., 4/22/87, at 93-97. North testified that Hakim was used in February as an interpreter for the Frankfurt meetings because the CIA had no Farsi translators available. North Test., *Hearings*, 100-7, Part II, 7/10/87, at 4. Secord stated that the only Farsi translator available from the CIA was a female employee, who would have been unacceptable to the Iranians because of her gender. Secord Test., *Hearings*, 100-1, 5/7/87, at 107. During the meeting in Frankfurt, a former CIA operative and Farsi interpreter, George Cave, was in Europe. Cave stated that he could have been available to translate for the meeting in a matter of hours had his Agency received such a request from the NSC. Cave Dep., 9/29/87, at 2.

    Following the February 24 meeting in Frankfurt, North told McFarlane in a PROF message that he had turned to Hakim after the CIA had refused to provide an interpreter; the decision to use Hakim as a translator developed: "Because CIA would not provide a translator for the sessions, we used Albert Hakim, an AMCIT (American Citizen) who runs the European operation for our Nicaraguan resistance support activity. DC/NE accompanied so that I would have someone along who would provide an 'objective' account." (North PROF, 2/22/86).
50. DC/NE Dep., 4/22/87, at 115.
51. Hakim Test., *Hearings*, 100-5, 6/3/87, at 226-27.
52. DC/NE Dep., 4/22/87, at 113.
53. *Id.*
54. Hakim Test., *Hearings*, 100-5, 6/3/87, at 287-89.
55. DC/NE Dep., 4/22/87, at 119-21.
56. *Id.*, at 93-94.
57. Secord Test., *Hearings*, 100-1, 5/7/87, at 109.
58. Secord KL-43, 2/27/86, to North, Subj: "Meeting at Kish Island."
59. North PROF, 2/27/86 8:54 a.m.
60. McFarlane PROF, 2/27/86, 4:02 p.m.
61. North PROF, 2/27/86, 8:11 p.m.
62. McFarlane PROF, 2/27/86, 9:37 p.m.
63. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 113-114.
64. *Id.*
65. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 115.
66. *Id.*, at 116-17.
67. Poindexter Test., *Hearings*, 100-8, 7/21/87, at 150.
68. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 117-18.
69. Secord Test., *Hearings*, 100-1, 5/6/87, at 154-58.
70. J7431, 2/28/86.
71. CIA Cable, 1/25/86, McMahon to Casey.
72. North, Personal Notes, 3/2/86.
73. DC/NE Interoffice Memo, 3/7/86, to C/NE: Subj: "NSC Operation."
74. Cave Int., 4/15/87.
75. Cave Dep., 9/29/87, at 5.
76. DC/NE Dep., 4/22/87, at 125.
77. Secord Test., *Hearings*, 100-1, 5/6/87, at 111.
78. North, Personal Notes, 3/7/86.
79. Cave Memo, undated, to DC/NE: Subj: "Results of Ghorbanifar Meeting".
80. Allen Dep., 4/24/87, at 407 08.
81. Allen Memo., 2/13/87.
82. North PROF, 3/10/86, 9:10 p.m.
83. McFarlane PROF, 3/10/86, 10:14 P.M.
84. North PROF, 3/11/86, 7:23 A.M.
85. Allen Memo., 3/21/86: Subj: "Conversation with Subject."
86. *Id.*

87. Secord Test., *Hearings*, 100-1, 5/6/87, at 111.

88. Cave Dep., 4/17/87 at 36.

89. Allen Memo., 4/2/86: Subj: "Conversation with Subject."

90. North, Personal Notes, 3/28/86.

91. Israeli Financial Chronology.

92. Israeli Historical Chronology.

93. DC/NE Dep., 4/22/86, at 136-39.

94. Cave Dep., 4/17/87, at 52.

95. Cave Memorandum, 4/3/86 to C/NE: Subj: "Meeting with Gorba 3 April."

96. North, Personal Notes, 4/7/86.

97. Cave Dep., 4/17/87, at 42.

98. Secord Test., *Hearings*, 100-1, 5/6/87, at 122.

99. Poindexter Test., *Hearings*, 100-8, 7/21/87, at 178.

100. North Test., Hearings, 100-7, Part I, 7/8/87, at 136.

101. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 14.

102. North Memo, undated, to Poindexter, Subj: "Release of American Hostages in Beirut," N28835.

103. *Id.*

104. *Id.*

105. North PROF, 4/7/86.

106. Hall Test., *Hearings*, 100-5, 6/8/87, at 79.

107. *Id.*

108. *Id.*, at 115.

109. *Id.*, at 114.

110. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 45.

111. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 11.

112. *Id.*, at 12-13.

113. *Id.*, at 13.

114. *Id.*, at 13-14.

115. Poindexter Dep., 5/7/87, at 188.

116. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 47-48.

117. North Test., *Hearings*, 100-7, Part I, 7/10/87, at 299-300.

118. Poindexter Test., *Hearings*, 100-8, 7/21/87, at 182-83.

119. North, Personal Notes, 4/15/86.

120. Cyrus Hashemi is discussed in greater detail in Chapter 9.

121. Allen Dep., 4/24/87, at 422.

122. Cave Dep., 4/17/87, at 54-55.

123. Information indicated that Iran was to pay $21.5 million for the purchase of two U.S. radars. DOD's price for the radar units, accurately noted in North's notes, was approximately $6.3 million. However, since Iranian funding for the radars failed to materialize, the Enterprise missed an opportunity for a second $18 million profit.

124. Cave Dep., 9/29/87, at 83-88.

125. Allen Memo., 4/16/86, Subj: "Conversation with Subject."

126. Allen Memo., 4/27/86, Subj: "Conversation with Subject."

127. Poindexter PROF, 4/16/86.

128. Poindexter PROF, 4/22/86.

129. McFarlane PROF, 4/22/86.

130. Secord KL-43, 4/21/86, to North.

131. North, Personal Notes, 4/22/86.

132. As North wrote to Poindexter in the PROF message: "We are seeing increasing evidence of Libyan efforts to buy the hostages and other signs of increasing disarray inside Lebanon. Further, there is increasing indication of seepage around the edge of our hostage project. Bottom line: [the Second Iranian Official] knows this and wants to proceed quickly with a release." North PROF, 4/29/86.

133. Allen Memorandum for the Record, 5/5/86.

134. Allen Interoffice Memo, 5/5/86, to DCI/DDCI: Subj: "Comments on the Ghorbanifar Operation."

135. Shultz Test., *Hearings*, 100-9, 7/23/87, at 18.

136. *Id.*

137. *Id.*, at 19.

138. *Id.*

139. *Id.*, at 20; Ex. GPS-B

140. Ex. GPS-20.

141. Shultz Test., *Hearings*, 100-9, at 189-90.

142. Ex. JMP-43, Poindexter Dep., 5/7/87.

143. Ex. GPS-20, Hearings, Vol. 100-9, 7/24/87.

144. Shultz Test., *Hearings*, 100-9, 7/23/87, at 21-22.

145. *Id.*, Ex-GPS-8.

146. Shultz Test., *Hearings*, 100-9, 7/23/87, at 70.

147. *Id.*, at 22-23.

148. *Id.*, at 24.

149. Ex. JMP-42, *Hearings*, 100-8.

150. *Id.*

151. *Id.*

152. Ex. GPS-21, *Hearings*, 100-8, 7/23/87.

153. Ex. GPS-25, *Hearings*, 100-8, 7/23/87, at 26.

154. Cave Dep., 9/29/87, at 88.

155. Cave Dep., 4/17/87, at 63.

156. Israeli Historical Chronology.

157. The second area in which the United States resolved not to give in to additional Iranian demands concerned the HAWK radars. The radars were separately offered for sale during the negotiations because of a technical quirk involving the Department of State. The radars, valued at approximately $6.3 million by DOD, had been purchased by the Government of Iran during the Shah's reign. Having been undelivered prior to the fall of the Shah, the radars remained in a Pennsylvania warehouse, under State Department control, as property to be negotiated between the U.S. and Iran. The Iranian Government was unaware that the NSC intended to sell Iran radars previously paid for by the Shah. Again acting through DOD, the CIA managed to obtain permission to purchase the radars without the State Department knowing of the true customer's identity. Even though an avenue to purchase the radars had been opened, the CIA eventually discontinued its efforts when Iranian funding failed to materialize. (DC/NE Dep., at 148)

158. North, Personal Notes, 5/6/86.

159. North, Personal Notes, 5/6/86.

160. Cave Dep., 4/17/87, at 66-68.

161. *Id.*

162. Cave Dep., 9/29/87, at 82-83.

163. North PROF, 5/6/86.

164. NSC Document, 5/9/86.

165. Secord KL-43, 5/14/86, to North. The Enterprise received the remaining $5 million on May 16, 1986.

166. DC/NE Dep. 4/22/87, at 149-50.

167. Int., CIA Finance Officers, 4/29/87.

168. DC/NE Dep. 4/22/87, at 150.

169. *Id.*, at 151.

170. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 66.

171. Ex. JMP-51, *Hearings*, 100-8, 7/20/87, at 66.

172. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 65.

173. *Id.*, at 66.

174. North PROF Note, 5/17/86.

175. Poindexter PROF Note, 5/19/86.

176. North PROF Note, 5/19/86.

177. North PROF Note, 5/20/86.

178. Israeli Chronology.

179. Those 508 TOWs would remain, however, in Israel even though the Israelis never accepted them into their military stocks. They were eventually shipped to Iran in late October 1986 in exchange for the release of Jacobsen. Secord Test., *Hearings*, 100-1, 5/6/87, at 124.

180. *Id.*

181. DOA Inspector General Report, 2/5/87, at 43.

182. *Id.*, at 43.

183. Simpson Dep., 6/1/87, at 63.

184. *Id.*, at 53.

185. In April, the CIA asked the Army for two HAWK radars. The Army viewed the request as distinct from the request for HAWK spare parts for one major reason: the request for the parts came from the White House; the request for the radars came only from the CIA. As a result, the Army handled the request through the usual procedures.

The results were dramatically different. The Army determined that they had insufficient information to make a competent legal review and that, regarding three of the line item repair parts requested along with the radars, to supply everything requested would entirely deplete available stocks. The Army General Counsel was notified, and she recommended that the Secretary of the Army decline to transfer the items.

186. Chapman Dep., 8/10/87, at 10-11.

187. Simpson Dep., 6/1/87, at 64-65.

188. Administration statements of record do not agree with this conclusion regarding the adverse readiness impact of the HAWK parts transfer. The Department of Army Inspector General's Report, for example, concluded: "The sale of HAWK ground support equipment repair parts to the CIA did not reduce the readiness of U.S. Army air defense forces." [DOA Inspector General Report, 2/5/87, at 45.] A careful reading of the Report, however, suggests Army investigators may have been unaware of the actual status of Army stocks regarding one critical common use part used in the HAWK radar. Moreover, while one Army official involved in the process testified that there was "some discussion" with Army investigators about the readiness impact of the HAWKs, he told the Committees "they didn't ask as many detailed or probing questions as we've had [during the deposition] today. . . ." [Chapman Dep., 8/10/87, at 21.]

When Admiral Crowe learned of the transfers in mid-1986, he did examine the readiness question, but confined his review to the TOWs, not the HAWK repair parts, because he "really didn't feel that the HAWK parts were going to be that crucial or critical one way or another." [Crowe Dep., 6/18/87, at 18.] Upon being apprised of HAWK repair part readiness data in his deposition, Crowe conceded those data had not been brought to his attention, and had they been, it would have been "a rather significant finding." [*Id.*, at 38.] General John A. Wickham, Jr., then-Chief of Staff of the Army, testified that had he known the facts as presented to him during his deposition, it would have concerned him, adding, "And that is the kind of thing that we would have gone to Will Taft about it and said, look, we've got a requirement here you've laid on us, but now we have some serious implications and we recommend strongly against it. [Wickham Dep., 8/14/87, at 46.]

Finally, Secretary Weinberger testified publicly that there was no adverse readiness impact from the arm sales to Iran, but his testimony was confined solely to TOWs. When first asked about readiness, the Secretary testified: "We had a very, very large stocks of those old obsolete TOW missiles . . . so that there would not be any appreciable effect on our readiness." [Weinberger Test., *Hearings*, 100-10, at 399-400.] Later in his testimony Weinberger referred to the TOWs as "obsolete weapons . . . our stocks were perfectly sufficient," [*Id.*, at 219], but he never addressed himself to the question of readiness vis-a-vis the HAWK repair parts transfer.

189. Ex. OLN-60, *Hearings*, 100-7, Part III.

Chapter 13
Deadlock in Tehran

The Presidentially approved McFarlane mission to Tehran in the spring of 1986, was intended to crown a 9-month effort to free the hostages and establish a dialogue with Iran. McFarlane likened the mission to Henry Kissinger's historic secret meeting with Premier Chou En-lai that paved the way to U.S.-China reconciliation.[1] Eight years after an Iranian Prime Minister, Mehdi Bazargan, was dismissed for meeting with President Carter's National Security Adviser, McFarlane was to meet with Speaker Rafsanjani, Prime Minister Musavi, and President Khamenei, the three most powerful leaders in Iran under Ayatollah Khomeini.[2] What is more, McFarlane believed that the hostages were to be released upon his arrival and that the HAWK parts were not to be delivered until the hostages were safe. Hopeful of success, North arranged logistical support for the return of the hostages and prepared a press kit for the White House.[3] North added his own flourish: He ordered a chocolate cake from an Israeli baker as a gift for the Iranians.[4]

The Iranians had very different ideas—centering on arms and Da'wa prisoners. As a result, the Tehran mission ended in acrimonious confrontation with the hostages still in captivity.

Preparing for the Mission

The American delegation consisted of McFarlane, North, former CIA official George Cave, then-NSC staff member Howard Teicher, Amiram Nir, adviser to the Israeli Prime Minister on combatting terrorism, and a CIA communicator who was to remain on the plane and forward messages via secure means to Poindexter in Washington and Secord in Tel Aviv. McFarlane included Nir at the request of the Israelis who viewed this as a joint U.S.-Israeli operation. All members of the delegation used aliases and Nir passed himself off as an American.[5]

The delegation took one pallet of HAWK parts with them in the aircraft. The remaining 11 pallets of parts were left in Israel with Secord, who was poised to deliver them upon the release of the hostages.[6]

The Tehran trip was both an extraordinarily heroic and a very foolish mission for McFarlane and his companions. As the immediate predecessor of the National Security Adviser, McFarlane knew many of the Nation's most sensitive secrets. North was privy to some of them as well, as was Teicher. Yet, the plan called for them to go to Tehran under false passports and pseudonyms without even safe conduct documents from the Iranian Government. Ghorbanifar and the Second Iranian arranged the visit. Ghorbanifar was a private citizen and the Second Iranian, was, according to Ghorbanifar, the person responsible for the kidnapping of CIA agent William Buckley.[7] The Iranian government had demonstrated during the U.S. Embassy seizure that it could not prevent the holding of diplomats as hostages by its Revolutionary Guards. The State Department was unaware of the mission because Poindexter had told Shultz back in March that a proposed high-level meeting between McFarlane and the Iranians had been cancelled, never informing Shultz that it had been rescheduled.[8] Further, Poindexter had rejected North's suggestion that Shultz, Poindexter, and McFarlane meet before the trip.[9] And friendly governments with embassies in Iran were not alerted. McFarlane and his party were, in effect, on their own in Tehran—even subject to legitimate arrest for entering under false passports and with missile parts.

Moreover, the plan contemplated that after the hostages were freed, McFarlane and the delegation would remain in Tehran until the promised HAWK parts were delivered.[10] The former National Security Adviser and ranking members of the NSC staff were, in effect, to substitute themselves for the hostages. In fact, the delegation had cause for concern during the negotiations when the Iranians repeatedly delayed refueling the aircraft.[11] The original plan for the mission entailed less risk. It called for the meeting to be on Kish Island within reach of U.S. naval forces.[12]

Even some of the proponents of the Iran initiative thought the mission to Tehran was premature. Secord testified that there should have been a preliminary meeting between McFarlane and the Iranians to prepare a realistic agenda for Tehran;[13] he believed that misunderstandings were creating false expectations on both sides. Nir also favored a preliminary meeting.[14] Cave believed that he and North should have undertaken a preliminary mission to Tehran before McFarlane went.[15] Poindexter testified that he considered a preliminary mission to be too dangerous and thus ruled it out.[16]

Even the timing of the trip was wrong. As North and McFarlane soon discovered, the trip took place during a holy period in the Islamic calendar, and Muslim officials were not fully available. The Iranian officials had to fast throughout the negotiations.[17]

Arrival in Tehran

The mission arrived in Tehran on the morning of May 25 and the first signs of failure were evident almost immediately. McFarlane expected to be greeted at the airport by Speaker Rafsanjani or some other high official. The Americans waited more than an hour, but no one showed up to greet them.[18] Then, only Ghorbanifar and the Second Iranian arrived.[19] McFarlane described his reactions in a cable he sent soon after arrival:

> It may be best for us to try to picture what it would be like if after nuclear attack, a surviving tailor became Vice President; a recent grad student became Secretary of State; and a bookie became the interlocutor for all discourse with foreign countries. While the principals are a cut above this level of qualification, the incompetence of the Iranian government to do business requires a rethinking on our part of why there have been so many frustrating failure[s] to deliver on their part.[20]

As events proved, however, the Iranians were tough, competent negotiators.

Under the pre-Tehran timetable, no HAWK parts—including the pallet on the plane—were to be delivered until the hostages were freed.[21] But even before the American delegation left the airport, the Iranians had removed the pallet.[22] The Iranians were nevertheless disappointed, for the Second Iranian had told his superiors that at least 50 percent—not merely 1 out of 12 pallets[23]—of the parts would be delivered.

The Misunderstanding

The McFarlane delegation went from the airport to the Independence Hotel (the Hilton in pre-Revolution days), where the entire top floor was assigned to them.[24] In 4 days of talks, virtually the only points on which the Americans and the Iranians could agree were generalities such as the United States' acceptance of the Iranian Revolution and Iran's sovereignty, and common fear of the Soviet Union, including their intervention in Afghanistan. On concrete issues such as the hostages and arms sales, the parties were poles apart.

In accordance with his instructions and the agreement that he believed had been made with the Iranians in Frankfurt, McFarlane insisted that the hostages be released before the HAWK parts were delivered. The Iranians took the opposite position: The HAWK parts had to be delivered first and then the release of the hostages would be negotiated. The Iranians maintained that they had not agreed in Frankfurt to a release of the hostages upon the arrival of the McFarlane delegation.[25] Yet Poindexter had rejected the Iranian position before the President authorized the mission and had so instructed McFarlane:

> [The Iranian official] wants all the HAWK parts delivered before the hostages are released. I have told Ollie that we cannot do that. The sequence has to be (1) meeting; (2) release of hostages; (3) delivery of HAWK parts. The President is getting quite discouraged by this effort. This will be our last attempt to make a deal with the Iranians.[26]

The Americans made contemporaneous notes and reports of the discussions that provide a full account of what happened at Tehran. The key points are summarized here.

Days 1 and 2—Marking Time

For the first 2 days, May 25 and 26, no high-level Iranian official appeared. The Second Iranian and other "third and fourth level officials" in the Prime Minister's office represented Iran.[27] With no Iranian decisionmaker present, the discussions consisted mainly of exchanges of platitudes, a "diatribe" by the Iranians against the Americans for not bringing "enough" HAWK parts, and protests by McFarlane about the Iranians' failure to produce the hostages.[28] Ghorbanifar tried to reassure the U.S. delegation that the hostages would be released,[29] but the Americans had lost confidence in his promises. McFarlane's anger flared. McFarlane regarded the meeting with low-level Iranians as a waste of time and a degrading breach of protocol. He stated that he had come to "meet with Ministers." The Second Iranian promised to produce an official at the sub-Minister level but McFarlane was still dissatisfied, saying:

> As I am a Minister, I expect to meet with decision-makers. Otherwise, you can work with my staff.[30]

True to his word, McFarlane withdrew from the discussion and left the staff to meet with the Iranians, including the Prime Minister's designee, a member of the Majlis and foreign affairs adviser to Rafsanjani (the "Adviser") who arrived at 9:30 p.m. on the second day and became the leader of the Iranian delegation. Because the Adviser had not attended any prior meetings, North reiterated the U.S. position:

> If your government can cause the release of the Americans held in Beirut 10 hours after they are released, aircraft will arrive with the HAWK

> missile parts. Within 10 days of deposit [of money], two radars will be delivered. After that delivery, we would like to have our logistics and technical experts sit down with your experts to make a good determination of what is needed.[31]

If the initial discussions hinted at the misunderstanding about the terms of the meeting, the Second Iranian made it unambiguous. He rebuffed North's request for a meeting between McFarlane and ministers, saying "We did not agree to such meetings for McFarlane."[32] He added that McFarlane would meet with no higher official than the Adviser; and the Adviser stressed to North that the immediate delivery of the HAWK parts and other arms was crucial to the success of the mission:

> There is a $2.5 billion deal . . . we want TOWs, especially with technicians. Easier to operate than MILAN. We would appreciate your advice on F/14 phoenix and harpoon missiles.[33]

He stated that the:

> Iman has said we are ready to establish relations with all the world except Israel. But you have to remove the obstacles. . . . Speed up what has been agreed. . . . A few 747's can carry a lot in one day. We would be very pleased to discuss our specific needs.[34]

From the first discussions with the Iranians in December, the Americans had described the hostages as the "obstacles" to better relations. Now the Iranians borrowed the term. In their view, the failure of the United States to ship the rest of the HAWK parts and to sell more arms were the obstacles both to a meaningful dialogue and to the release of the hostages. The different meanings that each side gave to the word obstacles symbolized their different objectives; for the Iranians it meant arms, for the Americans, the other hostages. As the discussions with the Adviser and his colleagues ended on the second day, North said he would urge McFarlane to meet the Adviser the next day.[35]

North reported to McFarlane that evening. In a message sent to Poindexter that night describing the day's events, McFarlane, relying on North's assessment, stated that the Adviser was "a considerable cut above the Bush Leaguers we had been dealing with." He went on to assure Poindexter that:

> . . . with regard to the hostages, we have and will continue to make clear that their release is the sine qua non to any further steps between us and if that has not happened by tomorrow night, they are aware that we will leave and that the balance of the shipment will not be delivered.[36]

The Final Days—McFarlane Remains Firm

For the American delegation and the Iranian representatives, May 27 was a long day. The discussions, termed "marathon" by Cave, lasted from 10 a.m. until 2:10 a.m. on May 28. They began with North, Cave, and Teicher holding a preliminary meeting with the Adviser and the other Iranians. The Adviser delivered bad news about the hostages:

> Our messenger in Beirut is in touch with those holding the hostages by special means. They made heavy conditions. They asked for Israel to withdraw from—the Golan Heights and South Lebanon. Lahad must return to East Beirut, the prisoners in Kuwait must be freed, and all the expeses paid for hostage taking. They do not want money from the U.S. Iran must pay this money.[37]

The Adviser, held out hope, however, particularly if the HAWK parts were delivered. He told North that the Iranians were negotiating to scale down the captors' demands. However, "only a portion of the 240 spare parts had been delivered. The rest should come. This is an important misunderstanding."[38]

McFarlane then met with the Adviser, one on one, for 3 hours. He sent a message to Poindexter immediately afterward that included the following:

> He [the Adviser] reported that Hizballah had made several preconditions to the release: (1) Israeli withdrawal from the Golan; (2) Israeli withdrawal from Southern Lebanon; (3) Lahad movement into East Beirut; and (4) someone (undefined) to pay the bills the hostages have accumulated. How's that for Chutzpa. . . . He hurriedly added [before I unloaded on him] that these demands are not acceptable and we are negotiating with them and believe that the only real problem is when you deliver the items [the HAWK parts and the radar] we have requested.
>
> * * * * *
>
> I then carefully recounted . . . that he [the President] had only reluctantly agreed to this meeting under a very clear and precise understanding of the arrangements. I then went over in detail what those arrangements were: 1. the U.S. would send a high-level delegation to Tehran. They would bring with them a portion of the items they had requested and paid for (which we had done); 2. upon our arrival, they had agreed to secure the release of the hostages promptly, upon release of the hostages to our custody, we would call forward the balance of items that had been paid for

> and those that had not been paid for would be dispatched as soon as payment had been received.
>
> * * * * *
>
> At this point he became somewhat agitated wanting to know just who had agreed to these terms. (I fingered Gorba and the Second Iranian). He stated that these were not the terms as he understood them. The basic difference was that they expected all deliveries to occur before any release took place.
>
> * * * * *
>
> He was obviously concerned over the very real possibility that his people (Gorba and the Second Iranian) had misled him and asked for a break to confer with his colleagues. I agreed noting that I had to leave tonight. (Actually I don't have to leave tonight but recognizing that we have been here for three working days and they have not produced I wanted to try to build a little fire under them . . . .)
>
> * * * * *
>
> I tend to think we should hold firm on our intention to leave and in fact do so unless we have word of release in the next six or seven hours. I can imagine circumstances in which if they said tonight that they guarantee the release at a precise hour tomorrow. We would stand by but not agree to any change in the terms or call the aircraft forward.
>
> * * * * *
>
> My judgment is that they are in a state of great upset, schizophrenic over their wish to get more from the deal but sobered to the fact that their interlocutors may have misled them. We are staying entirely at arms length while this plays out. We should hear something from them before long.[39]

McFarlane's threat to leave had its intended effect. Several hours later, the Adviser reported that the Hizballah had dropped all their demands except for the release of the Da'wa terrorists held prisoner in Kuwait:

> The only remaining problem is Kuwait. We agreed to try to get a promise from you that they would be released in the future.[40]

The request for U.S. intervention with Kuwait flew in the face of U.S. policy. The Da'wa had been convicted in Kuwait for a number of terrorist acts, including the bombing of the U.S. Embassy. Kuwait had stood up to threats of reprisal from Da'was for imprisoning the terrorists, and the U.S. had supported Kuwait. The United States wanted other countries to follow Kuwait's example. American policy was clear: Terrorists should be punished—not freed, as the Iranians were now asking.

Accordingly, McFarlane offered no hope of U.S. intervention with Kuwait on behalf of the convicted Da'wa prisoners, saying that U.S. policy was to respect the judicial policies of other nations.[41]

McFarlane adhered to his instructions. The Adviser then tried to cajole McFarlane to send the other HAWK parts prior to any hostage release:

> Since the plane is loaded why not let it come. You would leave happy. The President would be happy. We have no guilt based on our understanding of the agreement. We are surprised now that it has been changed. Let the agreement be carried out. The hostages will be freed very quickly. Your President's word will be honored. If the plane arrives before tomorrow morning, the hostages will be freed by noon. We do not wish to see our agreement fail at this final stage.[42]

McFarlane responded, "We delivered hundreds of weapons. You can release the hostages, advise us, and we will deliver the weapons."[43] Given McFarlane's firmness, the Adviser suggested another way of breaking the impasse: the U.S. and Iranian representatives should meet without McFarlane to try to formulate an agreement on the hostages and HAWK parts, which could be presented to both sides. McFarlane consented with the caveat that "staff agreements must be approved by our leaders."[44]

The NSC staff and the Iranians met for several hours until near midnight. The group hammered out a proposal that provided that Secord's aircraft with the remaining HAWK parts would take off for Tehran but turn around in midflight if the hostages were not released by morning:

> (1) The United States Government will cause a 707 aircraft to launch from a neutral site at 0100 in the morning to arrive in Tehran, Iran at 1000 on the morning of May 28 the seventh day of Khordad. This aircraft will contain the remainder of the HAWK missile parts purchased and paid for by the Government of Iran, a portion of which was delivered on May 24.
>
> (2) The Iranian Government, having recognized the plight of the hostages in the Lebanon, and in the spirit of humanitarian assistance, agrees to cause the release and safe return of the living American hostages and the return of the body of the deceased American and that this release will be completed not later than 0400 Tehran time.
>
> (3) It is further agreed by both sides that if by 0400 Tehran time, the hostages are not safely in

> the hands of U.S. authorities the aircraft with the HAWK missile parts will be turned around and will not land in Iran and the U.S. delegation will depart Tehran immediately. If, however, the hostages are released at 0400, as indicated above, the U.S. delegation will remain in Tehran until 1200 Noon on May 28, 1986.
>
> (4) The Government of the United States commits to deliver to Bandar Abbas, Iran, two phase one IHIPIR radar sets, fully compatible with the HAWK missile system now in the possession of the Iranian government. This delivery to take place after the arrival of the hostages in U.S. custody and within ten days after the receipt of payment through existing financial channels for these radar systems. It is further agreed that the government of the United States will make every effort to locate and identify those items from the original list of 240 parts which were not immediately available, and to provide those available as soon as possible after payment is received and the hostages are in U.S. custody.
>
> (5) Both Governments agree to a continuation of a political dialogue to be conducted in secrecy until such time as both sides agree to make such a dialogue public. It is agreed by both sides that this dialogue shall include discussions on the Soviet threat to Iran, the situation in Afghanistan, Nicaragua, and other political topics as many be mutually agreed. Both sides agree in advance that these discussions will include consideration of further defense needs of Iran.
>
> (6) Both Governments recognize that the lack of a clear channel of communications has contributed to misunderstanding and confusion in the past and agree that this problem is best resolved by having the United States provide a secure channel of communications between our two governments by placing a secure satellite communications team, and appropriate equipment secretly in Tehran. The Government of Iran agrees that the U.S. communicators will be accorded normal diplomatic privileges and immunity on an informal basis and without attribution.[45]

The Adviser pressed North for concessions on the Da'wa. North, more flexible than McFarlane, proposed a statement such as:

> The U.S. will make every effort through and with international organizations, private individuals, religious organizations and other third parties in a humanitarian effort to achieve the release of and just and fair treatment for Shi'ites held in confinement as soon as possible.[46]

The Iranians had another problem. The Adviser said that Iran could not arrange the release of the hostages by 4 a.m. He pleaded with McFarlane for more time. McFarlane was in no mood to compromise. However, he gave the Adviser until 6:30 a.m. to arrange for the release of the hostages. If the Iranians did not guarantee their freedom by then, the U.S. delegation would leave Tehran.[47]

Departure

Prior to the 6:30 a.m. deadline, the Second Iranian returned to the hotel with an eleventh-hour compromise. He offered to release two hostages immediately and two more after the HAWK parts were delivered. McFarlane refused, strictly observing his instructions that all the hostages had to be released before any parts could be delivered.[48]

Eager to keep the Iran initiative alive, North recommended that McFarlane accept the two-hostage compromise. He testified that McFarlane overruled him, and that he "saluted smartly and carried it out."[49] McFarlane testified that North was so determined to accept a compromise that, while McFarlane was asleep, North violated McFarlane's orders and directed Secord to send the plane from Israel with the remaining HAWK parts.[50] Upon awakening, McFarlane ordered the plane, midway in its voyage, to return to Israel.[51] North denied this allegation, and contended that McFarlane had approved sending the plane subject to its recall.[52] Secord testified that it was always part of the plan to send the plane.[53] Cave testified that he was unaware that the plane had taken off.[54] In any event, the 6:30 a.m. deadline passed without any indication that any hostages had been released.

The Iranians made last-minute efforts to sell the compromise and obtain the HAWK parts. At 8 a.m., just before the delegation left the hotel, the Adviser arrived and repeated the two-hostage proposal. McFarlane rejected it out of hand: "You are not keeping the agreement. We are leaving."[55]

Even at the Tehran airport, the Second Iranian tried to persuade McFarlane to change his mind. But there was no reprieve. McFarlane had come to Tehran with instructions and on the understanding that no more HAWK parts would be delivered unless all of the hostages were freed. He had expected the hostages' release upon his arrival. He had allowed the Iranians to temporize for 3 days. He once again rejected the last-minute compromise and ordered the plane airborne. As McFarlane left, he asked the Second Iranian to tell his "superiors that this was the fourth time that they had failed to honor an agreement. The lack of trust will endure for a long time."[56]

The plane left Tehran at 8:55 a.m. and landed in Tel Aviv several hours later. During the layover there, North consoled McFarlane with the news that the efforts with Iran had produced one benefit: some of the proceeds of the arms sales were being used for the Contras.[57] McFarlane assumed that Poindexter had approved this use of the money,[58] and that, because of the magnitude of the decision, it was not something that Poindexter would have undertaken on his own authority.[59] McFarlane testified that he, therefore, never raised the "diversion" with Poindexter or the President when he reported on the trip.[60]

Why the Tehran Mission Failed

The participants had different explanations for why the Tehran mission failed. Secord testified that McFarlane, who had demonstrated firmness, was responsible for the failure by insisting on release of all the hostages:

> But as far as I know and this will surprise some people I guess, but as far as I know, there was no Iranian agreement to produce all the hostages at the time of the meeting in Tehran . . . I don't know how exactly that expectation got into McFarlane's head.[61]

Hakim, who had been the interpreter at Frankfurt, agreed:

> I cannot recall any time that was spoken that all hostages would be released. That must have been [a] misconception by someone at sometime somewhere.[62]

McFarlane testified that he was "surprised" at Secord's statement: "[I]n talking to my own staff at the time, Colonel North and others, all of them reconfirmed, yes, we do expect and have all along the complete release of the hostages."[63] And North's messages and reports to Poindexter before the Tehran mission confirm that the President and Poindexter shared that understanding.[64] Indeed, in conveying the President's approval for the mission, Poindexter made clear to North that he would tolerate no more backing down on the conditions. He wrote North more than a month before the trip:

> You may go ahead and go, but I want several points made clear to them [the Iranians]. There are not to be any parts delivered until all the hostages are free in accordance with the plan that you layed out for me before. None of this half shipment before any are released crap. It is either all or nothing. Also you may tell them that the President is getting very annoyed at their continued stalling.[65]

North and Cave blamed the misunderstanding, and the consequent failure of the mission, on Ghorbanifar. North testified that "it turns out that the Iranians did not" agree to the release of all the hostages, even though Ghorbanifar said they had.[66] In his report on the trip, Cave stated that Ghorbanifar was a "dishonest interlocutor," who "gave each side a different picture of the structure of the deal." But Cave was confident that greed would overcome the problems, and he favored continuing the initiative: "Since both Gorba and the Second Iranian stood to make a lot of money out of the deal, they presumably will work hard to bring it off."[67]

Based on long experience with Iranians, Cave was not wholly optimistic. He detected in the Tehran discussions a new dimension to the problem. He concluded that the Kuwaitis held the key to the impasse, and that the American hostages would not be released until Kuwait released the Da'wa prisoners.[68] He grounded his conclusion on the independence of the hostage-holders in Lebanon.[69] Until then, he believed that the Hizballah would not release all the hostages.[70] The Iran initiative now threatened to move from an arms-for-hostage exchange to an arms-and-prisoners-for-hostages trade.

Chapter 13

1. The Washington Post, 11/13/86, at A21.
2. Memorandum of Conversation with Ghorbanifar, 4/16/86, C 9419.
3. N 12537.
4. Teicher, Tower Board Test., 12/19/86, at 10.
5. Cave, Tower Board Test. 1/5/87, at 11.
6. Secord Test., 5/6/87, at 74-75.
7. CIA Cables on Ghorbanifar, C 1502-15.
8. Shultz Test., 7/23/87, at 20, 26; Ex. GPS-B.
9. Ex. OLN 193.
10. 7/22/86 Memorandum from North to Poindexter, Subject: Hostage Recovery Plan, N 1495 at N 1503.
11. Cave Int., 9/29/87, at 15. McFarlane and North testified that their own safety was a secondary consideration. Aware that Buckley had been tortured for information, McFarlane, as a precaution, took along prescription medicine in case he was seized. Casey told North that he should be prepared to take his own life if he traveled to Tehran. North Test., 7/8/87, at 93. However, Cave testified that he himself did not have a poison pill and that he knew of no one else in the delegation who was issued one. Cave Int., 9/29/87, at 20.
12. Secord Test., 5/6/87, at 62-63.
13. Secord Test., 5/6/87, at 70-71.
14. *Id.*
15. Cave Dep., 4/17/87, at 41-42.
16. Poindexter Dep., 5/2/87, at 224-25.
17. Cave Int., 9/2/87, at 11-12.
18. Message from McFarlane to Poindexter, 5/27/86, N 1334-36.
19. *Id.*
20. *Id.*
21. N 1495 at N 1503.
22. Cave Int., 9/29/87, at 14.
23. Memorandum of 5/25/86 Conversations with Iranian Officials, N 49463 at 49467.
24. Cave Memorandum Concerning the Tehran Trip, N 1271.
25. 5/27/86 Message from McFarlane to Poindexter, N 1337-39.
26. Ex. 46-A.
27. N 1334.
28. N 1334.
29. N 1335.
30. Memorandum of 5/26/86 Conversations with Iranian Officials, N49468-70.
31. Memorandum of 5/26/86 Conversations with Iranian Officials, N 49471-78 at N 49472.
32. *Id.*
33. *Id.* at N 49477.
34. *Id.*
35. *Id.* at N 49477.
36. N 1334 at N 1335.
37. Memorandum of 5/27/86, Conversations with Iranian Officials, N 49479.
38. *Id.*
39. 5/27/86, Message from McFarlane to Poindexter, N 1337 at N 1338.
40. Memorandum of 5/27/86 Conversations with Iranian Officials, N 49481.
41. *Id.* at N 49482.
42. *Id.*
43. *Id.*
44. *Id.*
45. N 1490-92.
46. N 49485. Cave's memorandum of the meeting states that North insisted during the negotiations that "the United States would not interfere in the internal affairs of Kuwait." However, the memorandum further notes that North stated that the U.S. was prepared to seek the assistance of international organizations such as the Red Cross to better the conditions of the Shiite prisoners. N 1483 at N 1485.
47. N 1483 at N 1485.
48. *Id.* at N 1486.
49. North Test., 7/10/87, at 36-38.
50. McFarlane Test., 5/12/87, at 79.
51. *Id.*
52. North Test., 7/9/87, at 113-15.
53. Secord Test., 5/6/87, at 77.
54. Cave Dep., 4/17/87, at 85-86.
55. N 49487.
56. N 49487.
57. McFarlane Test., 5/12/87, at 161.
58. McFarlane Test., 5/12/87, at 165.
59. McFarlane Test., 5/14/87, at 4.
60. McFarlane Test., 5/12/87, at 162.
61. Secord Test., 5/6/87, at 76.
62. Hakim Test., 6/4/87, at 84.
63. McFarlane Test., 5/12/87, at 161.
64. Ex. OLN 279; N 1495.
65. Ex. OLN 276.
66. North Test., 7/9/87, 110-111.
67. N 1483 at N 1487.
68. Cave Int., 9/29/87, at 21-22.
69. *Id.*
70. *Id.*

Chapter 14

"Taken to the Cleaners": The Iran Initiative Continues*

The United States had taken a firm position in Tehran. Although offered two hostages, McFarlane had refused to deliver the remaining HAWK parts unless all the hostages were released first. But this was to be the last show of toughness by the United States: just 2 months later, the United States delivered the same HAWK parts after obtaining the release of only one hostage.

The Iran initiative continued until public reaction following its exposure in November 1986 forced its cancellation. Before then, some of the players had changed: a new channel to Iran (the "Second Channel")[1] with a new Iranian emissary was found; Nir was cut out of the negotiations; and Secord and Hakim took his place. More missiles were sent to Iran, where they went to the radical Revolutionary Guard. But fundamental problems remained, and the Second Channel turned out to represent the same Iranian leaders as did the First Channel. In the end, the United States secured the release of another hostage but three more were seized, at least one allegedly at the instigation of one of the Iranians with whom the U.S. negotiators had dealt earlier. Despite this, however, the U.S. negotiators agreed not only to sequential release of the hostages but also to seeking the freedom of the convicted Da'wa terrorists from prison in Kuwait.

The Bartering Continues

The deadlock in Tehran did not end Manucher Ghorbanifar's role as an intermediary. A strange interdependence had developed among the parties: Iran still wanted the remaining HAWK parts and other high technology weapons from the United States; the United States wanted the hostages; Israel wanted direct or indirect relations with Iran; and Ghorbanifar wanted to be paid.

Ghorbanifar had borrowed $15 million from Saudi entrepreneur Adnan Khashoggi to finance the HAWK parts shipment and Khashoggi, in turn, had borrowed the money from his financiers. But only one pallet of HAWK parts had been delivered in Tehran and Iran refused to pay. Ghorbanifar could repay his debt to Khashoggi only by inducing the United States to ship the rest of the parts.

Only days after the Tehran mission ended, Ghorbanifar was on the phone with an Israeli official seeking a meeting. Ghorbanifar blamed the failure of the Tehran trip on internal rivalries within the Iranian Government and complained about Robert McFarlane's refusal to accept the offer to release two hostages for the HAWK parts. The Israeli official restated the U.S. position: there could be no further discussions unless all the hostages were released first.[2]

Shortly afterward, CIA consultant George Cave was in communication with the Second Iranian, who also wanted the remaining HAWK parts delivered. The Second Iranian claimed that Iran controlled the hostages and that if all the parts were delivered, two hostages would be released. When the HAWK radars were delivered, the two remaining hostages would be freed.[3] The parts, however, would have to be delivered first and the hostages would follow—the mirror image of the U.S. position. Cave rejected this proposition—all the hostages would have to be released before any of the parts could be delivered.[4] The parties remained far apart.

Iran Discovers the Overcharge

By the end of June, Iran had raised another reason for refusing to pay Ghorbanifar and release the hostages: The Iranians had obtained a "[m]icrofiche of factory prices" that "does not compare w/ prices charged."[5]

On June 30, Cave spoke by telephone to the Second Iranian who complained that the Iranians had a microfiche price list showing the true price of the HAWK parts and that they had been overcharged by 600 percent.[6] The same day, Ghorbanifar called CIA official Charles Allen and told him that while he was being blamed for the overcharge, his markup was only 41 percent.[7]

The sensitivity of the Iranians to overcharging had been known to the Americans for some time. In a December 4, 1985 PROF note to John Poindexter, Oliver North warned that the Iranians were unlikely to release the hostages in a "single transaction" because they had been "'scammed' so many times in the past that the attitude of distrust is very high on their part."[8]

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*"Our guys . . . they got taken to the cleaners." Secretary of State, George P. Shultz, testifying at the public hearings, 7/23/87, at 184.

Trying for an Independence Dav Present

Since the Iranians' complaints rested on the microfiche list, Cave asked for proof of the overcharge. In the meantime, Ghorbanifar and an Israeli official attempted to keep the initiative alive. The Israeli hoped to gain the release of at least one hostage in time for the July 4 Independence Day celebration of the Statue of Liberty's 100th anniversary.[9] Ghorbanifar told the Israeli that he could deliver[10] and, on July 2, Amiram Nir, adviser to Israeli Prime Minister Shimon Peres on combatting terrorism, called North and predicted the release of an American hostage in time for the celebration.[11] North immediately dispatched an interagency team to Wiesbaden. But when the release did not occur, Poindexter criticized North for falsely raising expectations and North, in frustration, let it be known to Nir that he would not take any more calls from him until further notice.[12]

In July, North received a copy of a letter purportedly from Ghorbanifar to the Second Iranian.[13] The letter, dated July 8, complained that the Iranians had missed an opportunity by failing to release a hostage in time for the July 4 celebration. Using statistics of deaths in America from a variety of causes, the letter warned that Americans would lose interest in the hostages and, consequently, the Iranians would lose their leverage.[14]

The letter concluded by proposing two alternative arms-for-hostages transactions. As a third option, it recommended that if the Iranians were not serious about pursuing such transactions with the United States, they should terminate the whole matter immediately. In this fashion, it stated, ". . . we can pretend nothing happened, as if 'no camel arrived and no camel left.' "[15]

On July 26, Ghorbanifar and the Israelis registered a success: Reverend Lawrence Jenco was released. The Israeli intermediary had forced the issue, telling Ghorbanifar after the July 4 disappointment that the initiative was over unless a hostage was released. Shortly thereafter, Ghorbanifar announced that Jenco would be freed.[16] Although welcome, the release of Father Jenco generated confusion and concern; it was unclear what Ghorbanifar had promised to gain his release.

The next day North and Cave met in Frankfurt with Ghorbanifar and an Israeli official to clarify matters. Ghorbanifar described the arrangements he had made with the Iranians to obtain the release of Rev. Jenco. These included the sequential release of the hostages and the delivery of arms to Iran. Ghorbanifar also told the group that, on his own accord, he had promised the Iranians that if they could prove the claim that they had been overcharged by $10 million for the HAWK spare parts, the United States would make up for it by giving Iran 1,000 free TOWs.[17]

In a July 29 memorandum to Poindexter, North set forth Ghorbanifar's 6-step plan for the sequential release of the hostages in exchange for the remaining HAWK parts, 2 HAWK radars and 1,000 TOWs.

> Step 1: One hostage released and $4M to Ghorbanifar for items removed from the aircraft in Tehran during the May visit (Ghorbanifar received the $4M on July 28)
>
> Step 2: Remainder of 240 parts plus full quota of electron tubes (item 24 on Iranian parts list) and 500 TOWs delivered to Iran.
>
> Step 3: Second hostage released and Ghorbanifar paid for remainder of 240 parts.
>
> Step 4: 500 TOWs and 1 HIPAR [HAWK] radar delivered.
>
> Step 5: Third hostage released and Ghorbanifar paid for one radar.
>
> Step 6: Meeting in Tehran to discuss future followed by release of the last hostage and delivery of second HIPAR radar.
>
> We believe that the mixture of HAWK parts and TOWs was designed to satisfy both the military and the Revolutionary Guards in Iran.[18]

The proposed terms left the United States in an awkward position. McFarlane had withdrawn his delegation from Tehran when the Iranians had failed to produce all four remaining hostages in exchange for the 12 pallets of HAWK spares sitting on the ground in Israel. They had also discussed the HIPAR radars in Tehran but they, too, were to be delivered only after the radars were paid for and all of the hostages were released.

Poindexter had described the problem to McFarlane in a July 26 note: "Gorga (sic) has cooked up a story that if Iran would make a humanitarian gesture then the United States would deliver the rest of the parts. Of course, we have not agreed to any such plan."[19] Poindexter recognized, however, that the release of Jenco left the United States with a very real dilemma: "[t]he problem is that if the parts aren't delivered, Gorba will convince [his Tehran contact] that we welched on the deal."[20]

North repeatedly warned that one of the hostages might be killed if the HAWK parts were not delivered. In his July 29 memorandum to Poindexter, North predicted that "[i]t is entirely possible that if nothing is received, [the Second Iranian] will be killed by his opponents in Tehran, Ghorbanifar will be killed by his creditors . . . and one American hostage will probably be killed in order to demonstrate displeasure."[21]

North recommended that Poindexter brief the President and "obtain his approval for having the 240 HAWK missile parts shipped from Israel to Iran as soon as possible, followed by a meeting with the Iranians in Europe."[22] Poindexter noted on the memorandum: "7/30/86 President approved."[23]

The decision in Tehran not to ship the parts unless *all* the hostages were released first had been reversed. On August 4, 1986, the HAWK parts were flown into Iran. Secord provided the crew and Israel provided the airplane.[24]

The Da'wa Prisoners

The Adviser, the member of the Iranian Parliament who met with the McFarlane delegation, had told McFarlane and North in Tehran that the freeing of the Da'wa prisoners in Kuwait was essential to the release of all the United States hostages. The demand was taken seriously and North closely monitored the status of the Da'wa prisoners. North saw signs of hope, both that the captors of the Americans would relent on this condition and that Kuwait might, on its own, release the Da'wa prisoners.

After the release of Rev. Jenco, North wrote to Poindexter that "[a]lthough the Da'wa 17 in Kuwait continue to be mentioned as the ultimate demand on the part of the hostage-holders, . . . we have not seen reference to this issue since our meeting in Tehran."[25] On August 5, North discussed the Da'wa prisoners at a meeting of the Operations Sub-Group of the Terrorist Incident Working Group. The participants speculated that Kuwait might "releas[e] the Da'wa 17 and [about] the conditions that would lead to that action (*i.e.*, protected borders with Iran)."[26]

Crowe Is Apprised

At a meeting of the Terrorist Incident Working Group (TIWG) chaired by North in late June or early July, an allusion was made to the Iranian arms sales. One of the members of the TIWG was Lt. General John Moellering, then-Special Assistant to Admiral William J. Crowe, Jr., Chairman of the Joint Chiefs of Staff. The Joint Chiefs had not been informed of the sales and Moellering was perplexed by the reference to arms sales.[27] Later, Assistant Secretary of Defense Richard L. Armitage, who had been at the TIWG meeting, briefly explained the Iranian arms sales to Moellering.[28]

Moellering relayed what he had learned from Armitage to Admiral Crowe, a 40-year veteran who served in World War II, Korea and Vietnam.[29] Crowe, though Chairman of the Joint Chiefs, had not been consulted or informed about the decision to ship weapons to Iran, or the McFarlane mission to Tehran.[30] Crowe was "startled" by the "nature of the transaction" because it was "contrary to our policy."[31]

Crowe confronted Defense Secretary Weinberger and asked him to explain why the Joint Chiefs of Staff had been excluded from the decisionmaking process.[32] Weinberger offered no defense of the initiative. Instead, he merely told Crowe that the decision had been made by the Commander in Chief; that "he (the President) can do what he wants to do;"[33] and that "consultation with others below the Commander in Chief level would not have perhaps been very fruitful."[34]

For the first time, at Crowe's direction, the military focused on the effect that the previous sales to Iran had had on the strategic balance in the Middle East and the defense capability of the United States. Given Iran's avowed hostility to the United States, and to U.S. allies in the region, such a study by military experts should have been completed before any sales were authorized. The obsession with secrecy and the desire to avoid possible criticism led to the concealment of the sales not only from Congress but from the President's principal military advisers. Only after determining how the TOWs were actually being deployed was Crowe able to conclude that the arms sales did not significantly affect United States military interests.[35]

The Vice President Is Briefed

At North's request, Nir briefed Vice President George Bush during his visit to Jerusalem on July 29, shortly before the HAWK parts shipment. Craig Fuller, the Vice President's Chief of Staff, was present and prepared a memorandum of the meeting. According to Fuller, Nir "described the details of the efforts from last year through the current period to gain the release of the United States hostages."[36] Nir stated that one of the open issues was whether to agree to a sequential release of the hostages or to remain insistent on the prior release of all before any weapons were delivered.[37]

Nir described the initiative as "having two layers—tactical and strategic." The tactical layer was an effort "to get the hostages out." The strategic layer was designed "to build better contact with Iran and to insure we are better prepared when a change (in leadership) occurs."[38] Nir told the Vice President that Iran was using the retention of the hostages as leverage: "the reason for the [Iranians'] delay [in releasing the hostages] is to squeeze as much as possible as long as they have assets."[39] But the Iranians were, Nir stated, arranging to release one hostage with another to follow. In return, the Iranians wanted HAWK spare parts and TOWs.

Nir then framed the issues awaiting decision:

> Should we accept sequencing? What are alternatives to sequencing? They fear if they give us all hostages they won't get anything from us. If we do want to move along these lines we'd have to move quickly. It would be a matter still of several weeks not several days, in part because they have to move the hostages every time one is released . . . . It is important that we have assets there 2 to 3 years out when the change occurs. We have no choice other than to proceed.[40]

Nir also told the Vice President that "we are dealing with the most radical elements."

The Vice President did not comment except to thank Nir "for having pursued this effort despite doubts and reservations throughout the process."[41]

A New Deal in London

The August 4 delivery of the HAWK parts did not satisfy the Iranians. They continued to protest the high price of the HAWK parts. Moreover, to gain the release of Father Jenco, Ghorbanifar had promised the Second Iranian that the United States would provide 1,000 TOWs in addition to the HAWK parts if a hostage was freed.

Shortly before the HAWK parts were sent to Iran, North and Nir discussed the next steps in the initiative. North noted that he would instruct Cave to explain to the Second Iranian that some of the terms that Ghorbanifar had promised had not been authorized by the United States. North planned to ask Cave to convey the United States recognition of the Iranians' unhappiness.[42] At the same time, Cave was to note that, "if there is no payment" to Ghorbanifar, the United States would have to stop selling arms because "those who loaned the merchant (Ghorbanifar) the money will make the whole thing public."[43] To address these unresolved issues, North planned a meeting with the Iranians in Europe.[44]

On August 8, in what proved to be North's last face-to-face meeting with Ghorbanifar, North, Nir, and Ghorbanifar met in London. The meeting produced a plan, which North described in his notebooks:

> Proposed next step:
>
> 1. 40 Tubes [HAWK Radar Parts]
>   500 TOWs
> 2. [Hostage]
> 3. 500 + HP[HAWK Radar] + 137 missing items
> 4. [Hostage]
> 5. Meeting
> 6. Remaining for disc:
>   —[Hostage]
>   —HP
>   —[William] Buckley location
>   —Pay us $15.5 M
>   for 1000 TOWs
>   177 missing units
>   40 Tubes
>   2 HPs[45]

Although North apparently agreed to the proposal, he told Ghorbanifar that it was subject to approval in Washington.[46] The plan incorporated the principle of sequential delivery of hostages and arms—a position the United States had rejected since November 1985. North's notes of the London meeting suggest one reason, attributed to the Speaker of the Iranian Parliament Rafsanjani, for accepting the sequential process: " 'If all the Americans are released at once, everyone knows that a deal was made w/ Iran.' "[47] But this does not explain why arms deliveries had to intervene between each release.[48] In fact, North never opposed sequential delivery of arms and the release of the hostages. He recommended it as early as December 4 in a PROF note to Poindexter, and he was disappointed when McFarlane did not accept the two hostage deal in Tehran.[49]

The Microfiche Arrives

The dispute about overcharging remained unresolved. By August 6, the Israelis had received the microfiche list from Iran.[50] It consisted of pages showing prices as of November 1, 1985, and was authentic.[51] The Iranians had clear evidence that they had been grossly overcharged. But North never considered a refund, even though the Enterprise had more than enough money to mollify the Iranians. North had no intention of eliminating the markup on future shipments. At North's instruction, Robert Earl, North's National Security Council colleague, was calculating prices on possible future shipments using a 3.7 multiplier against cost.[52]

North's solution to Iran's complaint was to ask the CIA to prepare a phony price list to justify the prices charged Iran.[53] According to Allen, this effort failed because the CIA's Office of Technical Services proved incapable of preparing a credible forged list.[54]

As a further complicating factor, when the Iranians inspected the HAWK parts shipped in August, they rejected many of the parts and found the shipment incomplete. By August 20, Iran had identified 177 items that it had originally ordered and had not been included in the shipment. Iran had also determined that 63 of the items that had been sent were defective and asked that they be returned.[55]

Ghorbanifar was thus left in difficult straits; pursued on the one hand by his creditors and criticized, on the other, by Iran for participating in a scam. Ghorbanifar complained hysterically to Allen.[56] Even after Iran paid Ghorbanifar $5 million for the HAWK parts it received on August 4, Ghorbanifar claimed he was still $10 million short of meeting his obligations to his creditors. From North's point of view, an alternative to Ghorbanifar, with all his financial problems, was needed.

The Search for a New Channel

Ghorbanifar had never been a popular emissary with the Americans. McFarlane in December 1985 had, according to Secord, found him "one of the most despicable characters [he] had ever met . . . ."[57]

After the February meeting in Frankfurt, North complained that Ghorbanifar had deliberately distorted the translations.[58] The CIA's Deputy Chief of the Near East Division soon to become Chief of that division (C/NE), said that Ghorbanifar had "lied to both sides" to get them to the Frankfurt negotiation.[59] When George Cave joined the Iran initiative, he was "a little bit horrified" when he was informed of Ghorbanifar's involvement.[60]

On February 27, North wrote of the need to "get Gorba out of the long range picture ASAP."[61] By the time of the Tehran meeting in May therefore, Ghorbanifar was in jeopardy. When the Americans attributed the failure of the McFarlane mission to Ghorbanifar's misrepresentations to both sides, his replacement was certain.

Shortly after the Tehran breakdown, Poindexter authorized North to seek a new opening to Iran for continued negotiations—a "Second Channel."[62] Hakim testified that he believed that the idea for a second channel originated with his associate, Richard Secord.[63] Hakim took the lead in finding the appropriate contacts while keeping North and Secord informed.[64]

Hakim thus had the opportunity to promote his business interests and to serve both his newly adopted country, the United States, and his native country, Iran.[65] Hakim estimated the trade market between the United States and Iran to be worth $15 billion.[66] He hoped that his role in renewing relations between the two countries would win him a part of this market. Hakim and Secord intended to use part of the surplus from the Iranian sales to invest for their own benefit in commercial opportunities in Iran.[67]

Hakim contacted an Iranian expatriate (the "First Contact") whom he had employed in the past. At least twice in 1983 Hakim had brought the First Contact to the attention of the CIA as a possible source of information, but the CIA did not use him.[68] The First Contact came to the United States to meet with Hakim and Cave, on July 10 and 11. The meetings focused on the First Contact's connections in Iran and how the trade door to Iran might be opened. He was also tested by a private polygraph examiner.[69]

Hakim and Cave told the First Contact that the U.S. Government wanted to resume trade to re-establish relations with Iran and that they planned to "capitalize" on this trade by using their contacts in the U.S. Government. Hakim told the First Contact that he would pursue the Iranian-American trade market no matter what "we" (the United States) finally decided.[70]

The First Contact made it clear that he expected to be paid for his work. In Cave's presence, Hakim assured him that "if anything goes through" he would realize a "good commission."[71] The demand for remuneration was no surprise to Hakim. Transactions in the Middle East frequently call for "baksheesh"—a payoff to intermediaries. He had made such payoffs in the past.[72] Hakim would draw the money for baksheesh from the profits of the arms deals with Iran.[73]

With the promise of a payoff, the First Contact turned to a fellow Iranian businessman (the "Second Contact") with direct connections to the Iranian Government. How many others helped open the new channel is unclear. But, by the time it was in use, Hakim had obligated for payoffs an indefinite portion of $2 million set aside for such expenses from the Iran profits.[74]

The Second Channel's Debut

The First and Second Contacts quickly found another avenue into Iran. North first got reports that an emissary from the "Second Channel" had been identified in late July. By July 31, the emissary's relationship to a leading Iranian official had been verified.[75] On August 19, North learned that the emissary would meet with Secord and Hakim in Brussels, Belgium.[76]

The meeting occurred on August 25. Both the First and Second Contacts were present. Thereafter, the First and Second Contacts ordinarily did not attend the meetings between the Americans and the emissary.

The emissary ("the Relative") was an Iranian, who had distinguished himself in the ranks of the Iranian Revolutionary Guard Corps in the war with Iraq.

The Relative impressed Secord. In a message to North after the Brussels meeting, Secord described the discussions as a "comprehensive tour de force" covering matters ranging from Soviet activities to the conduct of the Iran-Iraq war. Arms, however, remained the currency for dealing with Iran. The Relative recited an extensive list of weapons that "[t]hey badly need[ed]," including "air defense items, armor spares, TOWs, gun barrels, helo spares, and tactical intelligence." Secord responded that "all things [would be] negotiable if we can clear the hostage matter quickly."[77]

The Relative knew of the efforts of Ghorbanifar and his contacts. He described Ghorbanifar as a "crook," but promised not to interfere in that channel. He offered to help Ghorbanifar win the release of more hostages. Secord reported to North on August 26, "[m]y judgment is that we have opened up a new and probably much better channel into Iran."[78]

Two Trains Running

Ghorbanifar was not immediately dropped. North and the CIA still pressed for the approval of the deal that North, Nir, and Cave had negotiated with Ghorbanifar in London on August 8. On September 2, North submitted a memorandum to Poindexter reviewing the initiatives under way to free the hostages. Ghorbanifar, the Relative, and some efforts by another country were all mentioned. In his memorandum,[79] North summarized the terms proposed at the London meeting with Ghorbanifar.

> Deliver 500 TOWs and the 39 electron tubes for the HAWK system previously requested.
>
> [Hostage] released.
>
> Deliver 500 TOWs and one of the HAWK radars previously requested.
>
> [Hostage] released.
>
> Meeting in Tehran to discuss broadened relationship, Soviet intelligence, etc.
>
> Deliver remaining radar and 100 TOWs while we are in Tehran.
>
> [Hostage] released and Buckley's body delivered.[80]

North favored the plan and asserted that others in the CIA did also: "[The] CIA concurs that [the Second Iranian]-Ghorbanifar connection is the only proven means by which we have been able to effect the release of any of the hostages."[81]

Having posed the question on sequential release to Poindexter, North then worked for a quick response. In a PROF note dated September 3, he advised McFarlane that "[w]e still have no response fm (sic) JMP re proceeding w/ the sequential release proposal outlined to you some time back. Have now undertaken to have Casey raise same w/ JMP tomorrow at thr (sic) weekly meeting. The things one must do to get action."[82] North's notebooks also show a meeting with Poindexter on September 4, in which the entry appears: "Go/No Go on sequential deliveries."[83] The entry mentioned the need to talk to "Joshua," North's code name for President Reagan.[84]

On September 8, North updated his September 2 memorandum to Poindexter. North noted that enough HAWK spare parts had been located to "entice the Iranians to proceed with the sequential release pattern proposed in the London meetings." According to North's notes dated that same day, Cave reported to North that the Second Iranian was "rabid" for the arrival of additional HAWK parts,[85] and Charles Allen called North to say that Casey planned to call Poindexter and that Deputy CIA Director Robert Gates was "supportive."[86]

At that point, news from Iran caused a change in plans and a reevaluation of Ghorbanifar's influence: North told Poindexter of a telephone conversation in which the Second Iranian told Cave that his "boss" in the Iranian Government approved of the planned meeting between the Relative and the Americans. North added that the Second Iranian's prompt transmission of the Prime Minister's approval was interpreted by the CIA as "confirmation that Rafsanjani may be moving to take control of the entire process of the United States relationship and the hostages."[87]

Second Channel Out Front

On September 9,[88] Poindexter met with President Reagan. The Second Channel was on the agenda.[89] Another American, Frank Reed, had been kidnapped that day, and North worried that the incident might scuttle the initiative.[90] He expressed concern in his notebook that "Paul" would stop everything.[91]

After Poindexter's meeting with the President, North told Allen that Poindexter had given him "new guidance" on the hostage issue. North was to continue working to develop the Second Channel, and Ghorbanifar was to be eliminated from all future shipments, "if at all possible."[92] In a memorandum to Director Casey, which was also sent to Gates, Allen observed that, to banish Ghorbanifar, North would have to raise "a minimum of $4 million."[93] Ghorbanifar was not to be abandoned altogether, however. North was instructed that "[i]f there is no other channel for financing future arms shipments, then Ghobanifar (sic) will be used as a last resort."[94] Allen said North was "greatly relieved" by the guidance.[95] Poindexter's instructions evidenced a strong commitment to continuing the Iran initiative—even the flawed Ghorbanifar could continue as a backup if the Second Channel failed.

Secord/Hakim Ascending

The opening of the Second Channel reversed roles for Secord-Hakim and Israel. The Israelis had developed the Ghorbanifar channel and they had assured the Americans that they knew how to deal with Ghorbanifar.[96] Even after the United States had taken over the initiative in January 1986, Nir had taken the risk—considerable for an Israeli—of accompanying McFarlane and North to Tehran.[97] Secord called the initiative a "joint venture" between the United States and Israel.[98]

Secord and Hakim had had little to do with the negotiations with the First Channel. According to Secord, his relationship with Ghorbanifar, whom he had met in the aftermath of the November 1985 HAWK fiasco, withered when Secord told him in an "acid" conversation in February that Ghorbanifar was going to recommend that Ghorbanifar be "terminated." Secord said that Ghorbanifar "took it the wrong way."[99]

After the February 25 and 26 meetings in Frankfurt, Secord was reduced to a behind-the-scenes adviser and logistician. Hakim's role was even smaller. *Persona non grata* to the Iranians, Hakim had to use a pseudonym, Ibrahim Ibrahamian—and wig—to serve as an interpreter at the Frankfurt meetings.[100]

All this changed with the opening of the Second Channel. Hakim, not the Israelis, developed the Second Channel. From August through November, Hakim and Secord were at all meetings with the Relative. Secord acted as a negotiator for the United States, presenting—and sometimes formulating—the views of the United States and offering military guidance to the Iranians. On one key occasion, North left Hakim, a private citizen, by himself to complete negotiations on behalf of the United States.[101]

Nir Suspects

Initially unaware of the dialogue with the Relative, Nir had continued to promote a new meeting between the Second Iranian and North. On August 24, he called North to urge a meeting as soon as possible.[102] By late August, however, Ghorbanifar had advised Nir that the Americans were seeking a new channel into Iran and that at least one meeting had already occurred between the new contact and the United States. Nir decided to come to Washington and press the Ghorbanifar channel personally. In a September 3 PROF note, North wrote to McFarlane that Nir was arriving the following week, and "will raise enough hell to move it [the Ghorbanifar proposal] if it hasn't all fallen apart by then."[103]

North prepared "Talking Points" for Poindexter's September 10 meeting with Nir. At the meeting, among other things, Poindexter told Nir that the United States would continue seeking the release of the hostages held in Lebanon; that the United States developed the Second Channel; that the Second Channel was connected with Speaker Rafsanjani; and that the President had approved proceeding with a meeting with the Rafsanjani representative.[104]

Nir left the United States on September 15. Before departing, he met again with Poindexter and North.[105] North's notes indicate that Nir stated that Ghorbanifar was trying to finance a deal large enough to entice the Iranians into gaining the release of all the hostages simultaneously. Two days after he left, Nir reported to North that Ghorbanifar was having little luck financing the deal. Appeals to the Second Iranian for the release of the hostages were likewise unsuccessful.[106]

On the heels of his first meeting with the Relative, Secord learned from the Relative that an independent TOW transaction involving Iran might be under way. Secord reported this to North on August 27.[107] In his message, Secord warned North that "our groups (sic) credibility with the Iranians is at stake here."[108] He added that the Relative was worried that this TOW transaction would "thwart a new beginning on the relationship with USG."[109]

Hakim advised Allen that Ghorbanifar and Khashoggi were likely involved in the transaction.[110] At North's request, Allen reported the matter to United States Customs.[111] Concerns about this independent transaction are reflected in North's notebooks as late as October 22.[112]

In "Great Satan's" Parlor

North's notes show that, throughout the Nir visit, he was preparing for the Relative to visit Washington.[113]

North complained about the CIA's resistance to arranging the visit and urged Poindexter to "call Casey and tell him to get on with moving the guy [the Relative] in so that we don't embarass (sic) the hell out of ourselves w/ Rafsanjani."[114] At another point, he complained of yet another delay:

> Why Dick [Secord] can do something in 5 min. (sic) that the CIA cannot do in two days is beyond me—but he does.[115]

Secord summarized for North the Relative's probable agenda in the upcoming meetings. He predicted that the Relative and "his group are attaching more importance to a long-term relationship than to any short-term quick fix, such as a few thousand TOWs." But Secord warned that the Relative would "have a list of needed items and will no doubt suggest some kind of shipment to clear the hostage matter and to firmly establish direct USG to GOI transactions and to eliminate the Gorbas and [the Second Iranian]." Secord also expected that the Relative would ask for intelligence information and a means of securely receiving more intelligence.[116]

To get the relationship off to a good start, therefore, Secord said "the CIA must deliver the goods [intelligence] and come up with suitcase secure phone device."[117]

Secord arranged for the Relative to be flown to Washington for a 2-day visit on September 19. The first day the Relative met with North, Secord, and Cave in North's office in the Old Executive Office Building. Hakim attended part of the meeting. On the second day, the group met at the headquarters of Stanford Technology Trading Group International in Vienna, Virginia.[118]

Secord's forecast of the Relative's agenda was correct. Each side assured the other that its objective was a long-term relationship and a common defense against Soviet aggression. But arms, hostages, the Da'wa—and a new subject, the status of Iraq's President, Saddam Hussein—dominated the discussion. The key points of these meetings follow.

Arms: The Relative brought an extensive arms "wish list." It included previously requested items, such as HAWK spare parts and radars, and many other items, including offensive weapons, critical to their war effort. To operate the equipment, Iran also could use "minimum levels of technological assistance" from the United States.[119]

North reviewed the list and told the Relative that, "in principle, to the extent that the items are available either here or elsewhere, there isn't a particular problem."[120] North singled out only the request for 10,000 175 RAP rounds as "not a reasonable request." He counseled patience: The President had authorized only the shipment of defensive arms, and, even if the new weapons were approved, the wait would be long since "most of these items would have to come by ship . . . . [T]hey are very big and heavy and only a few could come by aircraft."[121] North promised, however, that the TOWs and HAWK spares would be shipped as soon as the hostage issue was resolved.[122]

On the cost of weapons, North explained that Ghorbanifar had to be charged the market price, not cost. He suggested that, once the "obstacles" of the hostages were removed, the price to Iran could be reduced. In the meantime, North urged that Iran pay Ghorbanifar what it owed him to keep him and his financiers quiet.[123]

Hostages: North pressed for the release of all the hostages, not only as a condition of arms sales but as the first step toward a normal relationship with Iran. According to Secord's notes, North said:

> With respect to the document we prepared in Teheran, you will note a considerable emphasis on hostages. We consider them to be an obstacle. An obstacle to the understanding of the American people. The widespread perception here in America is that Iran is basically responsible for these hostages. The issue of hostages and terrorism must be dealt with since it is a political obstacle. On the other hand, you should realize that 52,000 people in the United States died last year in automobile accidents and 130,000 died from lung cancer. Five United States hostages rarely make the newspapers or the television, but because this is a democracy, if the President is found to be helping Iran with this obstacle still in the way, it would be very difficult to explain to our people.[124]

North reminded the Relative that the United States had to get the hostages "behind us" in order to ship weapons,[125] and he reiterated, "We are prepared to continue to provide to Iran items which will help in her defense but wish to see the hostage issue behind us so that we can move forward."[126] The Relative responded that he was "confident" the hostage issue "would be resolved."[127]

The Da'wa Prisoners: Less that two weeks before the meeting with the Relative, Allen had observed that "[m]ore and more, we suspect that some Hizballah leaders would be willing to settle for the release of the [hostages] for Shia prisoners held by [the] the Southern Lebanese Army."[128]

Cave agreed with this analysis. He believed that the families of the Southern Lebanese Army prisoners might place enough pressure on the Hizballah to force an exchange of the American hostages for the Lahad prisoners.[129]

Despite these assessments, the Da'wa prisoners were discussed at the meeting with the Relative. North said the United States could not intervene in Kuwait.[130] He predicted, however, that Kuwait would free the prisoners in phases "if the Government of Iran goes privately to Kuwait and promises them no terrorism."[131] North said that the Kuwaiti position "seem[ed] reasonable" and advised the Iranians to approach Kuwait. Later, when the parties prepared a summary of the two days of meetings, North himself added "the point about the Da'wa hostages and Kuwait and Kuwait's desire for a guarantee against terrorism" to the list.[132]

Saddam Hussein: The Relative also sought to enlist the support of the United States in the removal of Iraq's president, Saddam Hussein. The Relative said the Gulf countries, friendly to the United States, should end their support for Hussein. North responded that the United States could "make no commitment about getting rid of Hussein," even though "[w]e agree that there is a need for a non-hostile regime in Baghdad."[133] The Relative was not satisfied with this response. He returned to the issue the next day. He said that "he knows we can bring our influence to bear with certain friendly Arab nations and it is 'within the power of the Arab nations to get rid of Sadam (sic) Hussein.' "[134]

Other Issues: The Relative asked that the United States join Iran in trying to raise the price of oil.[135] North did not address this proposal at the time but later he observed that the oil market was "naturally depressed."[136] He also stated that the United States and Iran had "similar interests with respect to oil."[137]

The Relative said that the Second Iranian had "played a role" in the kidnapping of Frank Reed to put "additional pressure on the United States to send the next shipment [of weapons]."[138]

The Relative also stated that William Buckley "was not killed; . . . he died of natural causes; . . . he had three heart attacks."[139] According to Cave, the Americans challenged the Relative's assertion that Buckley had died a natural death.[140] They also questioned the Relative on the complicity of the Revolutionary Guards in Buckley's interrogation and torture, but the Relative denied it. Cave nevertheless concluded that the Revolutionary Guards had interrogated Buckley.[141]

Joint Commission: The Relative proposed a joint commission of Iranians and Americans to develop the relationship between the countries, and North appointed Secord, Cave, and himself as the American representatives.[142]

North also promised the Relative that President Reagan would signal his appreciation for Iran's withholding of landing rights for a hijacked Pan American flight.[143]

The Intermediaries: The Second Contact accompanied the Relative to the United States. In the midst of the negotiations, he raised with Hakim the question of his compensation for participating in the opening of the Second Channel. Hakim returned to the room and, with North, Secord, Cave, and the Relative present "made sure" that the subject of "financial remuneration" for himself and the other Iranians "would not be forgotten."[144]

When the first day of talks had concluded, North and Hakim led the Relative from the Old Executive Office Building to the White House and conducted a guided tour.[145] Hakim said the tour covered "every corner of the White House," including the Oval Office.[146]

During the tour, North paused before the portrait of President Theodore Roosevelt and told the Relative of Roosevelt's arbitrating an end to the Russo-Japanese War of 1904-05, for which Roosevelt won the Nobel Peace Prize. He said that the United States would be willing to arbitrate an end to the Iran-Iraq conflict. North repeated the same theme in reports to Poindexter the following day during and after the talks:

> Talks going extremely well. They and we want to move quickly beyond the "obstacle" of the hostages. Sincerely believe that RR can be instrumental in bringing about an end to Iran/Iraq war—a la Roosevelt w/ Russo-Japanese war in 1904. Anybody for RR getting the same prize?[147]
>
> You can brief RR that we seem to be headed in a vy positive direction on this matter and have hopes that the hostage resolution will lead to a significant role in ending the Iran/Iraq war.[148]

Preparations for Frankfurt

At the Washington talks, the Relative had suggested another meeting. In the meantime, the Relative kept in touch with North through Secord and Hakim.

North advised Poindexter in an October 2 memorandum that the Relative reported that there was now an "internal consensus on how to proceed with regard to the hostages 'obstacle,' " and that, at the next meeting, he would bring one of the officials who had been involved in the discussions with McFarlane in Tehran.[149] The Relative also asked for a "definitive sampling of intelligence."[150] North said the Relative gave the intelligence a "higher priority . . . than any other assistance we could provide."[151] He also reported that the Relative was bringing a Koran for the President.

> The memorandum recommended that:
>
> —North be authorized to meet again with the Relative.
>
> —The President inscribe a Bible with an appropriate inscription from Galatians, 3:8 to be given to the Relative.[152]
>
> —Poindexter prohibit anyone other than North, Cave, and Secord from having contacts with Iranian intermediaries.
>
> —The United States provide intelligence to Iran.[153]

North explained how intelligence could be provided without giving Iran an advantage in the war. He suggested that a "mix of factual and bogus information could be provided at this meeting which will satisfy their concerns about 'good faith' . . ."[154]

In conclusion, North observed that:

> A memo from you to the President has not been prepared for obvious reasons. It is hoped that between now and 3:00 p.m. Friday you will have an opportunity to privately discuss this with the President and obtain his approvals/signatures on the steps indicated above.[155]

North did not explain the "obvious reasons" for not preparing a memorandum for the President. By giving the Iranians a Bible signed by the President, North provided Iran with proof that was used as evidence of the President's involvement.

North reported to Poindexter that Nir and the Second Iranian were besieging North and Cave with phone calls inquiring about the status of the Second Iranian's request for the additional HAWK parts and TOWs discussed at the London meeting in August. North noted that, although Nir was in a "supporting role rather than acting as a primary source of control" in the Second Channel, continued Israeli participation was desirable for political and operational reasons.[156] North recommended that Secord be sent to Israel to "ameliorate Nir's *angst* over his 'new status'."[157]

With Poindexter's approval, Secord met Nir on October 5 in Israel. He delivered a letter from President Reagan to the Israeli Prime Minister thanking him for his efforts in furthering the Iran initiative and lauding Nir's work. Secord assured Nir that he would continue to be consulted, and he conveyed the President's reaffirmation of his commitment to the Prime Minister that the Iran initiative continued to be a joint venture project.[158] North's enthusiasm for the Second Channel was shared by others. On October 3, Poindexter sent McFarlane a PROF note attributing much of the success with the Second Channel to McFarlane himself and saying that a "group release" of the hostages was still the objective:

> Your trip to Tehran paid off. You did get through to the top. They are playing our line back to us. They are worried about Soviets, Afghanistan, and their economy. They realize that the hostages are obstacle (sic) to any productive relationship with us. They want to remove the obstacle. [The Relative has been in Beirut, says he has good news for Frankfort (sic). We shall see. Still insisting on group release. If this comes off may ask you to do a second round after the hostages are back. Keep your fingers crossed.[159]

McFarlane wrote a PROF note back to Poindexter the next day saying, "[i]f you think it would be of any value, I might be able to take a couple of months off and work on the problem."[160]

This optimism continued even though more Americans were kidnapped in Lebanon shortly before the meeting with the Relative in Washington. Reed was seized on September 9, and Joseph Ciccipio was taken hostage three days later. In an attachment to his October 2 memo, North attributed the Ciccipio kidnapping to the Second Iranian but blamed Reed's abduction, which the Relative had fixed on the Second Iranian, on another group.[161] And on October 21, just before the second set of October meetings in Germany, Edward Tracy was kidnapped.

Chasing the Horizon—Frankfurt, October 6-8

The U.S. negotiating position suffered dramatic erosion in Frankfurt. The concessions made included mainstay principles of American policy on the Middle East and terrorism. In his testimony, when questioned about these concessions, North asserted that he had "lied every time [he] met the Iranians."[162]

The meetings began on October 6. North, Secord, Hakim, and Cave represented the United States. The Relative appeared for the Iranians, along with a Revolutionary Guard intelligence official.[163] The intelligence officer was not a new face for North, Secord, and Hakim. He had attended the first meeting with Ghorbanifar and the Second Iranian in Frankfurt on February 25-26, and was given a briefing there on U.S. intelligence by Secord. He had also participated in the negotiations with the McFarlane party in Teheran in May.

Because of his persistently negative positions and his insistence on concessions to Iran, the Americans called him "the monster."[164] Hakim, for his part, saw the man as "the engine" because he was the "heart" behind the Iran initiative.[165] To Hakim, this man was the key to an agreement.

In the negotiations, the Engine described himself as the "extraordinary representative of the cooperative that has been assigned to deal with the relationship with the United States"[166] He made clear, however, that there was no unanimity within the Government of Iran on establishing a relationship with the United States.

The agenda at Frankfurt was the familiar one:

Arms and Intelligence: Speaking for the Americans, Secord told the Iranians that the President had approved the transfer of HAWK parts, high-powered radars, 500 TOWs, and three pallets of free medical supplies.[167]

North went further by dropping the restriction against offensive weapons. The "only" limitation was that the sales not include items that would "allow or encourage" the Army or the Revolutionary Guards to seize Baghdad.[168] The Relative had candidly admitted in Washington that he wanted artillery to make Iranian infantry attacks more successful.[169]

The only "problem" North cited with providing the howitzers and the 500 howitzer barrels requested in Washington was that the numbers involved would force the Americans to open a production line. Secord suggested that Iran go to a friendly third country for the artillery, and the United States would "look the other way."[170] North assured the Iranians that ". . . all of this and more can be done, but we need to fireproof our President by removing the obstacle." North then provided the Iranians with what he described as "very sensitive intelligence . . ." North added that, "[i]f it ever became known that we have done this, we would be finished in terms of credibility as long as President Reagan is President."[171] Cave described the intelligence that he had brought[172]—some of which contained erroneous information.[173]

Hostages: North and Secord said that only the hostages stood in the way of a great era of Iranian-American relations, a period that would include arms transfers involving the Foreign Military Sales Program from the United States to Iran and great financial support for rebuilding the war-torn economy. The hostages were the "obstacles," the term used to describe them throughout the meetings.

The Engine insisted that the Iranians did not hold the hostages and that, if they did, they would have resolved the problem as they had the Embassy hostages.[174] Iran could not guarantee that the Lebanese would listen "100 percent" to Iranians on hostage matters, he said.[175]

The Engine added that there was no full agreement in Iran on the release of the hostages. He explained that his role was to ". . . gain the Iranian confidence and the Lebanese confidence." Turning to North, he asked the Americans to "[p]lease, show me the way" to resolve the impasse.[176] North responded that the Americans sympathized with the Iranians' problems in gaining the release of the hostages.

Saddam Hussein: In Frankfurt, the Americans accepted the Iranians' position on Hussein. Poindexter testified that the matter was not discussed with the President.[177] The President told the Tower Board that the statements made by the American negotiators were "absolute fiction."[178]

North said that the United States sought peace in a way that "it becomes very evident to everybody that the guy who is causing the problem is Saddam Hussein." North said that Iran was no threat to the other countries in the region, and he repeated that Hussein prevented peace.[179] The Engine asked North, "[D]o you really believe this?"[180] North replied that he did and that the "inner circle of our Government knows that."

North purported to convey the President's view of President Hussein: "Sadam Hussein is a [expletive]." Hakim, acting as interpreter, demurred at the harshness of the expletive, but North urged a faithful translation saying, "Go ahead. That's his [the President's] word, not mine."[181]

As the negotiations continued, North returned to the fate of President Hussein. He declared that "[w]e also recognize that Saddam Hussein must go," and North described how this could be accomplished.[182]

The Da'wa Prisoners: When the Engine asked North to "show me the way" to gain the confidence of the Lebanese captors and his fellow Iranian officials, North provided two quick answers: First, he said, "[l]et me give you some ammunition for your guns." Then he brought up the Da'wa prisoners.[183]

North said he recognized the desire of the Shi'ite captors to obtain the release of their "brethren who are held in Kuwait as convicted terrorists."[184] He assured the Iranians, that, although the United States had told Kuwait that the Da'wa prisoners were "their business," the United States would not criticize Kuwait should Kuwait release them.[185] The United States had recently conveyed this position to Kuwait, North added. Although a North notebook entry indicates that he and Poindexter had met with the Kuwaiti Foreign Minister on October 3,[186] the Committees have been unable to determine what was discussed. What is indisputable is that at various meetings with the Second Channel, representatives of Iran—a nation classified by the United States as a supporter of terrorism—North offered assistance in gaining the release of Da'wa terrorists. Whether that assistance consisted of not protesting the release, or more, it was contrary to U.S. policy against terrorism.

Thus, North claimed to the Iranians that the Kuwaiti position was "simple": Kuwait would release the prisoners over time in exchange for a promise from "somebody in authority" that there would be no more attacks on the Amir of Kuwait.[187]

Cave told the Committees that the Americans emphasized that they distinguished between the Da'wa prisoners given relatively brief prison terms and those who received longer sentences. Cave said the Americans also made it clear that they would not intervene on behalf of the three Da'wa prisoners sentenced to death.[188] The transcripts of the Frankfurt meetings do not show such distinctions, and North testified to none. Although the transcripts are not complete, they contain considerable discussion on the Da'wa. But even if the distinction was drawn, any intervention was against U.S. policy.

Peace Broker: From time to time North discussed President Reagan's interest in resolving the Iran-Iraq war on "honorable" terms. North even created a fanciful meeting between himself and the President at Camp David in which he showed the President the Relative's arms list. According to North, President Reagan then ordered North to "[s]top coming in and looking like a gun merchant." At this point, he said, President Reagan struck the table and declared, "I want to end the war."[189]

As North presented the Bible inscribed by the President, he created another apocryphal session with the President. President Reagan was depicted as having returned from a weekend of prayer for guidance on whether to authorize North to tell the Iranians that "[w]e accept the Islamic Revolution." North said that the President gave him the passage that he later inscribed in the Bible with the observation: "This is a promise that God gave to Abraham. Who am I to say that we should not do this?"[190]

Starting Points: North presented a handwritten list of seven points that he said the President had authorized.

1. Iran provides funds for 500 TOWs and remainder of HAWK parts.
2. Within 9 days we deliver [HAWK] parts and TOWs (500) plus medical supplies.
3. All American hostages released.
4. Iran provides funds for 1500 TOWs.
5. Within 9 days we will deliver:
    *1500 TOWs
    *Technical support for HAWKs
    *Updated intelligence on Iraq
    *Communications team
6. Iran will then:
    *Release [John] Pattis
    *Provide body of [William] Buckley
    *Provide copy of Buckley debrief
7. United States will then:

*Identify sources for other items on [the Relative's arms] list. . . .[191]

*Iran will then work to release other hostages.[192]

Counterpoints: The next day, the Engine responded with his own list:

1. The United States would establish a timetable for the delivery of the arms on the Relative's list, thus committing itself to providing offensive and defensive arms.

2. One hostage would then be released.

3. A timetable and a location would be established for the exchange of intelligence; and the United States and Iran would evaluate the Russian, Afghanistan, and Iraq situation.

4. Iran would "only promise" to gain the release of the remaining two American hostages but this was to be linked to American progress on the Da'wa prisoners. The Engine made clear that the release of the Americans and the Da'was would have to "wash." "They would have to coincide or have some other logical correlation."[193]

5. Shipment of the eight items on the Relative's list would proceed based upon mutually agreed-upon priorities and quantities. Iran would try—but not promise—to locate and arrange the release of the other two hostages.

6. The United States would contact Kuwait to make sure that there are no problems with the release of the Da'wa prisoners.

7. The United States and Iran would agree to work within the framework of the Hague settlement process to provide Iran with military items, such as F-14 spare parts, that Iran had paid for under the Shah's rule but that had been embargoed after the Embassy seizure.[194]

By way of "clarification," the Engine added two other points to his list: John Pattis, a United States citizen, who had been arrested in Tehran as an alleged spy, would not be considered in this round of discussions, and the status of the Shi'ite prisoners held by the Southern Lebanese Army in Lebanon would be left to the Lebanese themselves to resolve.[195]

Ambassador Extraordinaire

The Engine presented his counterproposals to an anxious group. North had to return to Washington, and all parties were worried that their prolonged discussions might attract the attention of local authorities. As North prepared to leave, he told the Iranians that their differences were so great that Iran and the United States would "pass each other like ships in the night."[196] The Relative, in turn, accused the Americans of maintaining that they were pursuing long-term relations with Iran while focusing on the hostages as "the only thing that is being discussed."[197]

North was not prepared to give up and suggested to the group, "[W]hy don't you guys hold this discussion after I'm gone, OK?" He left his seven-point proposal behind, saying "[t]his list was given to me by the President of the United States of America. And there's no way on God's green earth that I'm going to violate my instructions. . . . That's the President's authorized list. That's all he authorized . . . . In fact, he told me 'don't give away more than you have to'—that is everything he authorized me to talk about."[198]

North then was gone. Secord, too, left to attend to business in Brussels. Cave also departed. North had said that, if by the time he reached Washington there was no acceptable proposal, he would report to Poindexter that the meeting was unsuccessful and that the Second Channel would have to be closed.[199]

Hakim testified that North left him to negotiate with the Iranians.[200]

> Q: Did you feel like you had been the Secretary of State for a day?
>
> A: I would not accept that position for any money in the world, sir.
>
> Q: Well, you had it better than the Secretary of State in some sense. You didn't have to get confirmed; correct?
>
> A: I still believe that I have it better than the Secretary . . . . I can achieve more, too.
>
> Q: And if this initiative had succeeded, did you ever make any calculation as to how much you and General Secord would make?
>
> A: In what period of time, sir?
>
> Q: People tend to think in terms of three-to-five year plans.
>
> A: Many millions.
>
> Q: Did it bother you at all that here you—and I say it respectfully—a private citizen was left with this kind of task of negotiating an agreement in which if it succeeded, you stood to benefit very substantially?
>
> A: What bothered me was that we didn't have the competence within the government to do what I could do. That still bothers me.[201]

Hakim's negotiating guidelines were North's handwritten seven-point plan.[202] This same sheet of paper also contained Secord's handwritten addition: "We understand S. Hussein must go—believe we can help (after obstacles go) with diplomacy in the Arab world . . .—continued military pressure OK."

Hakim completed the negotiations by the time North arrived in Washington. In his public testimony, Hakim stated that he would be "honored" if the agreement was known as the "Hakim Accords."[203]

The agreement's nine-point plan differed sharply from North's seven-points. Under his grant of immunity, Hakim produced the original version in Farsi. As translated by the Library of Congress, this version provides:[204]

> 1. Iran provides funds to Mr. Hakim for 500 TOWs and, if willing, Iranians will provide for the HAWK spare parts which remain from the previous agreement.
>
> 2. Nine working days from now the 500 TOWs and the HAWK spare parts (if accepted by Iran) and the gifted medicines will be delivered to Iran.
>
> 3. Before executing Item 4 below, Albert will provide the plan for the release of the Kuwaitis (17 persons).
>
> 4. 1½ (1 definitely and the 2nd with all effective possible effort) American hostages in Lebanon, through the effort of Iran, will be released by the Lebanese.
>
> *5. Using the Letter of Credit method, (three to four days after delivery of shipment stipulated in Item 2) additional 500 TOWs (together with a maximum of 100 launchers), within four days after the execution of Item 4 above, will be delivered to Iran. The method of Letter of Credit will be reviewed between Albert and [.] by tomorrow night. Iran will pay the funds for 1500 TOWs (the 500 TOWs mentioned above plus an additional 1000 TOWs) and the 1000 TOWs will be delivered to Iran within nine days.
>
> 6. The United States will start with the technical support of the HAWKs (material and know-how), update of the military intelligence and maps, establishment and commissioning of the special communication link, and will prepare the chart related to the items (provided by Mr. [ ]) indicating price and delivery to Iran.
>
> †7. Before the return of Mr. [ ] to Tehran, the subject of the Moslem prisoners (Shia) in Lebanon and the manner of their release by the involved parties will be reviewed by Mr. Secord.
>
> 8. Iran will continue its effort for creating the grounds for the release of the rest of the hostages.
>
> 9. The steps for delivery of items referred to in the second part of Item 6 above will start.

The Hakim Accords contain a number of concessions. These include the release of only 1 1/2 hostage; the delivery of 500 TOWs before any release and a promise to supply 1,000 more TOWs; technical support for the HAWKs; updated intelligence; and prices for the other weapons Iran had listed. In negotiating the nine-point agreement, Hakim felt under intense pressure from North. In addition to the short deadline to complete the agreement, Hakim testified North also told him that the President wanted a hostage back by Election Day.[206]

Transmission and Approval: Hakim testified that when Secord returned from Brussels he transmitted a translation of the nine-point plan to North by secure communications device.[207] Hakim said he learned quickly from North that the President had approved the plan.[208] It was distributed on the same day to the CIA which noted on its copy: "[T]his is the first draft of nine points. There were subsequent refinements which are only available at the NSC."[209]

The only subsequent draft with "refinements" found by the Committees at the NSC is in an October 10, 1986, PROF note from North to Poindexter.[210] Unlike the Hakim version, the PROF note plan includes Hakim's price for the TOWs, and provides that only "some," not all, of the 17 Da'wa prisoners would be released:

> 1. They [the Iranians] pay $3.6m next week.
>
> 2. We deliver 500 TOWs (no HAWK parts) 9 daysafter (sic) payment.
>
> 3. Copp & Sam help prepare a plan for approaching the Kuwaitis to guarantee no more terrorism against the Amir and by which the Amir will use a religious occasion to release some of the Dawa. They will take this plan to the Hizballah as their idea (face saving gesture w/ the Hizb.)
>
> 4. Two hostages (if possible, but no less than one) released w/in four days of TOW delivery. If only one hostage released, whole process stops and we meet again.
>
> 5. Repeat funding and Delivery cycle as in steps 1 & 2 above.
>
> 6. We send tech support for HAWKs, update on Intel and secure comm team to Tehran and provide location/availability of artillery items noted

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* The Letter of Credit will be opened in favor of Mr. [ ] and he will make the money for the 500 TOWs available by using 80% of the Letter of Credit.

† After discussion between Mr. Secord and Mr. [ ], it was agreed regarding the Moslem prisoners that the sentence (text) will be written in the following manner: [end of text].[205]

> on the original list provided by [the Relative] in Washington mtg.
>
> 7. Iran does utmost to secure release of remaining hostage(s).[211]

The plan represented a retreat for the United States. The Iranians' position on sequential deliveries had been accepted, and the plan did not expressly provide a mechanism for the release of all three of the remaining American hostages kidnapped before 1986. Iran had agreed to release only one hostage.

Moreover, the U.S. position on the Da'wa prisoners was bargained away by promising to develop a plan for the release of some of the 17 prisoners. The United States had criticized allies who, fearing reprisals, had freed terrorists. It had cited Kuwait as an example of a nation with courage: a nation that, although small and vulnerable to terrorism, was nonetheless willing to imprison terrorists. As the Secretary of State testified: "And here was little Kuwait, very vulnerable, standing up to it [terrorism]. So we have to support them. They are much more vulnerable than we. If they can stand up for it, dog-gone it, so should we."[212]

There were other concessions: a $2,400 reduction in price for each of the 500 TOW missiles; an agreement to prepare a list showing the price and delivery schedule of the items on the Relative's long weapons list; and an abandonment of the demand for the return of William Buckley's remains and the transcript of his interrogation. The fate of Pattis was left for another day. The Americans seized in September 1986 were not mentioned.

Secretary Shultz said of the plan at the public hearings: "Our guys. . . they got taken to the cleaners."[213]

Nevertheless, North reported to Poindexter that Cave and Secord had told him that his "donkey act" with the Iranians had had "quite an effect." He said that the Engine had confided to Secord that if he had returned to Iran "without the hope of further help . . . he would be sent back to the front."[214]

In recommending that Poindexter approve the plan, North minimized his concessions. He asserted that the "[o]nly changes from my proposal is sequential nature of their plan and lack of mention of Buckley body & transcript of interrogation." The release of the Da'wa and the contemplated supply of artillery, he said, could be managed "w/o any great complications." He stated that Cave, Director Casey, and the Chief of the Near East Division all believed that the plan was the "best and fastest way to get two more out—probably within the next 14 days." He added, as the Division Chief had reported, "the situation in Lebanon is getting much worse and we may be getting close to the end of the line for any further movement."[215]

North concluded that the agreement was a bargain: the United States would get two more hostages out for "nothing more than the two sets of 500 TOWs." As for the future, North recommended to Poindexter that "we shd push them to include the Buckley remains and transcript and then get on with it."[216] Poindexter testified, "I discussed those with the President, and he approved the ones that applied to the U.S. Government.[217]

Poindexter and North had different rationales for approving the concessions on the Da'was. North testified that, sooner or later, Kuwait would release the prisoners "as sure as I'm sitting here"[218] and so "the United States might as well get something for them."[219]

Poindexter maintained that since Secord, a private citizen, was to develop the plan to facilitate the release of the Da'wa prisoners, his actions would not compromise U.S. policy against concessions to terrorists.[220] Poindexter held to this position even though Secord represented the United States in the negotiations and North had appointed him, with Poindexter's approval, to the joint U.S.-Iran commission suggested by the Relative.[221] Cave stated that he understood that the United States approach to the Kuwaitis would be official but that the United States would not seek relief for the three Da'wa prisoners who had been sentenced to death.[222]

Whatever the rationale, any intervention to free the Da'wa prisoners conflicted with official U.S. policy, which was being publicly proclaimed at the very time the secret negotiations with the Second Channel were under way. In response to an article in *Newsweek* magazine speculating on a trade of Da'wa prisoners for the American hostages, the White House prepared a "press guidance" sheet dated October 14, which reiterated long-standing U.S. policy:[223]

> The question is not whether we would seek the release of 3 or 17 prisoners. We will not negotiate the exchange of innocent Americans for the release from prison of tried and convicted murderers held in a third country, nor will we pressure other nations to do so. To make such concessions would jeopardize the safety of other American citizens and would only encourage more terrorism.[224]

Arms Transfer Preparations

Shortly after the meeting in Frankfurt, North and Secord began to implement the nine-point plan. They advised Nir that the Iranians would deposit money for the shipment of the 500 TOWs. Secord also told Nir that the United States would charge significantly less for these TOWs than it had in the earlier transactions. This caused Nir concern. He warned Secord that the low price could cause Ghorbanifar or his financiers to protest and expose the operation. He recommended charging the old price, so the excess could be used to pay Ghorbanifar's financiers.[225]

But the price quoted to the Second Channel was part of the deal for the hostages and could not be renegotiated. Instead, Nir and North discussed instructing Secord to tell the Relative that the low price was an "undercharge" that would have to be increased on the next shipment.[226]

North, Secord, and an Israeli official met in Geneva on October 22 to iron out the details of the next arms shipment to Iran. They agreed that the 500 TOWs sent to Iran would be taken from the 508 sent to Israel in May and rejected as inadequate by the Israeli Defense Forces, and that the United States would supply Israel with another 500 replacement missiles.[227]

On October 27, the flight crew that Secord had retained arrived in Israel. The next day, an Israeli plane delivered the substitute 500 TOWs to Iran.[228] Under step 4 of the nine-point plan, at least one hostage was to be released 4 days later.

The switch of TOWs, which North approved, was not without risk. The Relative had already complained to North that the TOWs the United States had sent earlier had misfired in battle. Secord said in his testimony that he had heard the Iranians complain that the TOWs had gone "ballistic."[229]

Secord testified that he did not participate in the decision to switch the TOWs.

> Q: Do you think that was consistent with trying to build the moderate power base for the Iranians if you are sending them old weapons after . . . they've complained before about the quality of weapons?
>
> A: It may not have been, but that was the decision that was taken by the Government.
>
> Q: Well, did the Government make the decision, our Government make the decision to allow the Israelis to make the switch?
>
> A: Oh, yes.
>
> Q: Did you participate in that decision?
>
> A: Not at all.[230]

Arming the Guards

As the Americans knew, both the Relative and the Engine were members of the Iranian Revolutionary Guards Corps. The Revolutionary Guard is the military arm of the most radical elements in Iran. As Cave explained, "they were the executive arm of the revolution."[231] The Revolutionary Guard was competing with and trying to replace the regular Iranian Army.[232]

Early in the Iran initiative, the Americans were on notice that the weapons sent to Iran might go to the Revolutionary Guards. Ghorbanifar had, in fact, contended that the first shipment of TOWs in August of 1985 had been seized by the Guards when it arrived at Tehran.[233]

According to Cave, the Relative told the Americans that the February shipment of TOWs had gone to the Revolutionary Guards.[234] In November, the Engine shared with North his hope to build an air wing for the Guard.[235]

Although the arms were sent to the Revolutionary Guard, the January Finding had a different purpose: to "facilitat[e] efforts by third parties and third countries to establish contact with *moderate elements* within and outside of the Government of Iran . . ." (emphasis supplied). The goal approved by the President was to supply arms to the moderate elements to assist them "in their effort to achieve a more pro-United States government in Iran by demonstrating their ability to obtain requisite resources to defend their country against Iraq and intervention by the Soviet Union."

To the best of the Committees' information, the President was never told that the United States was arming the Revolutionary Guard. Cave stated that he recalled no discussion of whether arming the Guard was consistent with the Finding.[236] In his last interview with the Committees, Cave still characterized the Second Channel as "middle roaders."[237]

Mainz Meeting

North, Secord, Hakim, Cave, the Relative, and the Engine met in Mainz, Germany, south of Frankfurt, on October 29, 1986, to discuss the promised release of one or two hostages and the implementation of the rest of the nine points.

The Mainz discussions began with ominous news. The Relative reported that dissension in Iran over the initiative had prompted students associated with a political faction to publish "five million copies" of pamphlets describing the McFarlane visit to Iran.[238] Moreover, although the Hizballah was "basically under the control of the Iranian Government," a faction of Hizballah radicals had published an account of the negotiations between the United States and Iran for distribution in Lebanon.[239] These events almost prevented the Engine and Relative from coming to the meeting.[240]

The information in the leaflets and the Hizballah publication had not reached the United States. Secord later in the meeting observed that, "[I]f it was blown, it was only blown inside."[241]

The Relative then insisted that North tell him who in the U.S. Government supported the Iran initiative. North said the President, the Vice President, Poindexter, Casey, and Regan were in favor, and Secretaries Shultz and Weinberger opposed. "No one else counts," and Congress would not be told "until we get the hostages out."[242]

North reaffirmed the nine-point plan, saying that he wanted to be able to "assure his boss that the plan he approved is indeed being carried out."[243] North then provided the Iranians with a report on steps the United States had purportedly taken since the meeting in Frankfurt to implement the nine-point plan and to otherwise assist Iran. The Committees could not determine whether North's claims were factual.

North told the Iranians that the United States had persuaded another Western government to terminate arms shipments to Iraq. The United States also allegedly had private discussions with certain Arab governments. When the Engine stated that an Arab government had agreed to put pressure on Iraq, North said "That's us doing that."[244] The Committees have no evidence that North's statement of U.S. pressure was true. North testified, though not with reference to this, that "I lied every time I met the Iranians."[245]

Hostages: North expressed bewilderment that the Iranians did not simply "exercis[e] every possible amount of leverage they've got to get those people out." He found this particularly confounding because ". . . we agree that as soon as they're out, we can do all kinds of good things." North included on the list of "good things," foreign military sales contracts and the "formal relationship that McFarlane had held out in Teheran."[246] "The big problem I've got," North said, "is the whole damn appearance of bartering over . . . bodies."[247]

In discussing the plan for the release of the hostages, North divulged to the Iranians classified material of particular sensitivity.[248]

Arms, Intelligence, Assistance: The prospect of American military assistance to Iran if more hostages were released dominated the Mainz meetings. The Relative informed the Americans that Rafsanjani had taken a personal interest in restoring inoperable Phoenix missiles.[249] The Relative held out the hostages as bait: "I'll tell you what I'll do. You send that technician to help us with the Phoenixes, I will personally get the third guy out, and I could tell you where the rest of the guys are. I will learn where they are."[250]

The Phoenix was a complicated missile that required several technicians to repair.[251] The Americans expressed concern that if the United States sent technicians, their presence might be discovered by America's allies. North explained, "If there is a visible effort made by the United States Government when there's a long list of hostages being held in Lebanon, this President is going to get stoned by" U.S. allies. To this, Secord added: "[A]nd by his own people."[252]

Secord told the Iranians that he had located the man "who ran the HAWK system in Iran for me,"[253] and could provide them with technical assistance. But the hostages were the obstacle. Secord said ". . . [if] after Sunday we will still have at least one hostage that we score or count against Iran—at least one. I think its highly unlikely that we would be allowed to send technicians into Iran, to Isfahan."[254] On the other hand, "if he [an Iranian leader] just goes out tomorrow or the next day and grabs those three guys out of Lebanon, we'll go back in and rebuild his goddamn air force. I built it once, I'll go back in and build it again. That was my baby; I built that air force—four and half years on it."[255]

Secord estimated that, with his help, the Iranians would find in their own depots "a billion dollars worth of stuff they don't know they've got—in two weeks."[256]

North added that if the Iranians were to get the hostages out, the United States would send them "a million" TOWs. In fact, he said, the United States would "open up an FMS [Foreign Military Sales] account and you'd get a better price on them."[257]

The Relative added a request for 22 Chinook helicopters, then under embargo,[258] reconnaissance cameras for the RF-4,[259] and the return of $20 million which the Relative said had been adjudicated as belonging to Iran but which the F.B.I. continued to hold.[260]

The Da'wa: North emphasized to the Iranians that he had "already started" on the Da'wa plan. He claimed that he had "already met with the Kuwaiti Foreign Minister, secretly. In my spare time between blowing up Nicaragua."[261] (North, in an aside to the American participants, stated that he had spent 7 days putting together a plan on the Da'wa.)[262] However, when asked about the particulars of North's seven days of effort, Cave said he never heard about it.[263]

The Interlocutors: Ghorbanifar was not the only Iranian intermediary demanding money. The Relative told Secord and Cave that he had received "ten calls from [the Second contact] asking where his money was."[264] Secord responded that the financial straits of the Second Contact were "our responsibility; we'll take care of it."[265] The discussion then turned to Albert Hakim. The Relative complained that Hakim was "trying to push this [the whole relationship] too fast."[266] Secord explained that "we have placed Albert [Hakim] under pressure on the hostages." He later returned to Hakim's defense by saying:

> Now, Albert told me at the beginning—he told all of us—he did not want to be involved in these political discussions. He said, 'I'm a businessman, I don't want to be involved in political discussions.' Because of his language capability and because of his association with me—Sam [Cave] can't be everywhere all the time—we have to use Albert. He has not wanted to be in this role. And he's not comfortable in this role.[267]

Secord promised that "[a]s soon as the President tells us to move ahead, I'm sure that Sam and I can get the right people involved in this."[268]

Secord's description of Hakim as a businessman and a reluctant participant in the Iran initiative contrasted with other explanations of Hakim's role. At the Washington meeting, North had described Hakim as a "consultant to our government on Iranian affairs from time to time."[269] In Mainz, just a short time before Secord made his remarks, North told the Relative that Hakim was a "consultant" who worked for North "in the President's office," that he held this position for 4 or 5 years and that he handled North's Farsi translations.[270]

Joint Commission: As the United States shifted from the First Channel to the Second, there were strong indications that, notwithstanding the change, the United States was dealing with the same political consortium in Iran.

This was confirmed at Mainz, when the Relative explained the composition of the Iranian factions supporting the initiative. The Relative said, "[w]hen [the First Channel] raised the issue of establishing relations with the United States he [Rafsanjani, to whom the Second Channel reported] was in favor of it, but for his own politics he decided to get all the groups involved and give them a role to play."[271] The Relative observed that this politically astute maneuver by the Iranian official meant that if the initiative "would be a failure and all parties are involved so there would not be an internal war."[272]

The Relative then announced the Iranian membership on the "joint commission." The appointees were the Engine, a participant in meetings held under the auspices of both channels; the Adviser, who negotiated with McFarlane in Tehran; a member of the Iranian Parliament, the Majlis; and the Second Iranian,[273] the primary Iranian official in the First Channel and the man who the Relative had said was responsible for Reed's kidnapping.[274] The Americans did not object even though the composition of the Commission, including the Second Iranian, "really blew our minds."[275] The Commission membership demonstrated to the Americans the true breadth of the political union with which they had been dealing all along.

Saddam Hussein: The removal of Iraqi President Hussein from power remained on the Iranian list. Secord said that "we" would talk to another country in the region.[276] He added, "It's going to take a lot of talk, a lot of talk."[277]

The Release of Jacobsen

When the negotiators in Mainz disbanded, North reported to Poindexter through Lt. Col. Robert Earl. Earl advised Poindexter that the Relative "assures us we will get 2 of 3 US hostages held by Hizballah in next few days—probably Fri or Sat but NLT [not later than] Sunday."[278] North proposed that he and Secord go to Lebanon to coordinate the release of the hostages and to brief the American Ambassador on both the third hostage and the "remaining three . . . when we get info from Rafsanjani on locations . . . ." North also wanted to arrange to pick up a Soviet tank that Iran had promised.[279]

So that the President would get credit for the release, North urged that the President announce the hostages' release "after the AMCITS are in USG hands" but "before CNN knows it has happened." North hoped that under this arrangement, President Reagan would be "seen to have influenced the action . . . ."[280]

North voiced the same thought to Poindexter via Earl in a PROF note: "This is the damnedest operation I have ever seen. Pls let me go on to other things. Wd very much like to give RR two hostages that he can take credit for and stop worrying about these other things."[281]

Secord reported to North that Hakim had spoken to the Engine and that the Iranians were caucusing on a statement to be made by Speaker Rafsanjani. The initiative was in doubt, but the Engine gave it an "80 percent chance." At the same time, the Engine reported that a second hostage would soon be released and asked for another "500 TOWs ASAP." Secord added that he did not know whether the second hostage and the 500 TOWs were linked.[282]

On Sunday, November 2, two days before the midterm elections, David Jacobsen was released.

Exposure

The next day, the initiative was exposed. The source was neither Ghorbanifar nor his financiers, who had made earlier threats to do so, but the Lebanese magazine, *Al-Shiraa.* It had picked up the story that had been circulating in the Hizballah broadsides. On November 4, Rafsanjani addressed the Iranian Parliament and acknowledged that an American delegation had visited Tehran. After the speech, the Relative conveyed to North that the Iranians still wished to continue the initiative.

The Americans also wished to continue. Howard Teicher of the NSC staff wrote to Poindexter that the revelation of the initiative "coming on the heels of high-level Iranian visits to Damascus, are the clearest possible signals we could receive that the succession struggle is underway and United States-Iranian relations are likely to play an important role in the struggle." He advised that ". . . we must not let this opportunity to assess the consequences in Iran of these revelations slip through our fingers." He then "strongly urge[d] [Poindexter] to discuss our options with Shultz and Casey. At a minimum, we need to determine how best, other than parts, etc., to signal the Iranians in a productive manner."[283]

North continued to seek the release of another hostage in return for concessions on the Da'wa. North's notebooks show entries about his desire to resolve quickly the "Kuwaiti United States Da'wa problems and the hostages."[284]

North's notebooks reflect his belief that the goal of securing the release of the hostages justified the initiative, and that the public would approve once the facts were out. Noting this, he wrote his conclusion and included a notable misstep: "Ultimately on side of angles [sic]."[285]

Taking Stock in Geneva

On November 8, 1986, Cave, North, Secord, and Hakim met with the Engine in Geneva.[286]

By now, each side had its own acute problems. The Engine worried that Ghorbanifar, whom the Iranians now suspected of being an Israeli agent, might cause trouble He asked Cave's advice on how to "appease" him.[287] North, on the other hand, stated that the burgeoning publicity surrounding the initiative made it all the more imperative that the hostages be released. North assured the Iranians he was "here at the order of the President and we still have the same objectives as explained in Washington and Frankfurt."[288] The Engine made it clear that the freeing of the Da'wa prisoners was a prerequisite to the release of the "other two hostages." Once the Da'wa prisoners were released, there would be "no problem" with the two hostages.[289]

The Americans responded that "we had done all that was humanly possible by talking dsirectly (sic) to the Kuwaitis . . ."[290] The Americans concluded by strongly recommending that the Iranians send a delegation to Kuwait with the assurance that it would be "warmly received."[291]

Release of the hostages had, from the beginning, been linked to arms sales. Now it was officially linked to the Da'wa as well,[292] even though the Iranians had receded from their demand that all the prisoners be released. North wrote in his notebooks that the Engine said that if "some" of the Da'wa prisoners were released, "then something may be possible."[293]

On November 9, North and Secord met with Nir. They told Nir that the Lake Resources account had been closed because some of the Iranian funds had become "mixed" with funds for Nicaragua. North's notes of this meeting show that Nir told North and Secord that Ghorbanifar was asserting that the United States was spending Iranian money in Nicaragua.[294]

When North returned from Geneva, he briefly acted, at Hakim's suggestion, as a ghostwriter for Rafsanjani. The Iranians were contemplating making a public statement in the light of the exposure of the initiative in Iran. On November 11, Hakim asked North to "create something for Rafsanjani to say."[295] North drafted a statement that he sent Hakim by KL-43 computer to be transmitted to the Engine. North added instructions that the statement be issued "from Iran." He said that it would "help with the Kuwaiti situation on which we are now working."[296]

In North's proposed statement, Iran proclaimed "the enduring reality of its Islamic Revolution," its interest in peace, and "His Holiness[297] the Imam['s] . . . gracious[ ] command[ ] that acts of terrorism are not acceptable to advance the aims of the Islamic Revolution." North asked that the Engine "carry this message for me as a personal favor for the cause we both believe in . . . ."[298]

The Circle Opens

The Secretary of State testified that he did not receive confirmation of the arms sales that had been reported in *Al-Shiraa* until November 10, when he attended a meeting in the Oval Office with the President and principals of the NSC. He feared the arms sales would continue. He saw the Administration's statement—that the arms embargo would remain in effect "as long as Iran advocates the use of terrorism"—as a license to ship arms to Iran by pretending that it was no longer supporting terrorism.[299]

On November 14, a day after the President's televised speech on the issue, Secretary Shultz, at his regular weekly meeting with the President, urged him not to sell any more arms to Iran. The President did not commit himself. Shultz then tried another approach. The next day, he submitted a proposal to Chief of Staff Regan permitting the State Department to take control of U.S./Iran policy. This would have given State the authority to block further sales. Regan said he favored this step, but the President was unwilling to adopt it.[300]

Shultz appeared on "Face the Nation," a televised news program, on November 16. He acknowledged that, while he opposed further arms sales to Iran, he did not have authority to speak for the Administration. Not until the diversion of money to the Contras was discovered and Poindexter's resignation was requested did the President agree on November 24 that the State Department should assume control of the Iran initiative.[301]

In the meantime, North pursued it. His notebooks show continued discussions about the Da'wa prisoners and other aspects of the initiative. One note stated his intention to seek the support of the American-Israel Public Affairs Committee (AIPAC) to attempt to quiet growing concern among Congressional Democrats about the arms sales.[302] The Committees have no information that North did contact AIPAC.

North called Nir on November 23 and informed him that he had been interviewed by Attorney General Meese. North said that Meese had asked him about the diversion of some of the Iran arms money to Nicaragua. North then asked Nir to have Israel accept responsibility for the plan but Nir rejected the request. North's notes quote Nir as saying: "I cannot back this story."[303]

The Finale

In early December, Cave asked Hakim to set up another meeting with a representative of the Second Channel. Hakim did so and, on December 12, Under Secretary of State Michael Armacost and Director Casey met to discuss ground rules for the meeting. They agreed that the Iranians would be informed that the channel would, henceforth, be used only for intelligence purposes between the two countries.

In a memorandum to Casey that day, Allen warned that the Second Channel would effectively shut it down if limited in this manner. Allen argued that it was "imperative" to change the ground rules to permit exchanges "broader than intelligence."[304]

The following day, Casey met alone with Regan and succeeded in reversing the ground rules. Under the new decision, the Second Channel could be used for policy purposes as well as intelligence exchanges.[305] Secretary Shultz learned of this change only after the fact. He observed: "Nothing ever gets settled in this town."[306]

The meeting with the Engine took place in Frankfurt on December 13. Before the meeting Cave told Charles Dunbar, the State Department representative and a Farsi speaker, that Hakim would attend only if his attorney was also present. Cave declined the condition and Hakim left. Dunbar reported to his superiors that, "[i]t is just as well that Hakim is out of the circle. The last thing we need is another five percenter involved."[307]

Once the meeting was underway, the Engine told Cave and Dunbar that, despite the press revelations, Iran was ready to proceed within the "already established framework." He noted that "[m]uch had been accomplished by North, Secord, and Cave."[308]

He then proceeded to lay out the four issues on Iran's agenda. The first was the Iran-Iraq war. The Engine said that Iran had "some ideas" on this topic but that the "key and non-negotiable demand . . . is that Saddam 'and his organization' must go."[309]

The second issue was the delivery to Iran of all Iranian-purchased military equipment held by the United States. The Engine said that senior Department of Defense officials had admitted that these goods belonged to Iran, and the Iranians wanted them.[310]

Third, the Engine asked for the new weapons that had been "promised" by the United States. He listed 1500 TOWs and 100 launchers as the items promised.[311]

Fourth was the Da'wa prisoners in Kuwait whom the Engine described as "an important issue for the Lebanese." As he had in Geneva, the Engine said that if the Da'wa prisoners were released, the Lebanese would "be more flexible" on the hostages. He promised that, in this event, Iran would apply "whatever limited influence it has."[312] (Cave later told State Department Official Charles Dunbar that he believed that Poindexter had met recently with the Foreign Minister of Kuwait and had urged the release of the Da'wa prisoners.)

The Engine brought up the nine-point plan, saying that five or six of the points had been executed. This was the first that Dunbar or the State Department had heard of the nine points, and Cave had to confirm to Dunbar that there was such a plan.[313] Cave told the Committees that the State Department did not act on his invitation to brief Dunbar, and as a result, Dunbar was not well prepared for the meeting.[314]

When he spoke, Dunbar conveyed the new groundrules for the Iranian-American dialogue. He told the Engine that arms from the United States would no longer be a part of the initiative, and the Engine, in a quiet and unemotional voice, responded that that "would bring us back to zero." He suggested that Dunbar must be mistaken and that he should return to Washington for a full briefing.[315]

When Dunbar told Secretary Shultz of the nine-point plan, the Secretary was shocked. He insisted on immediately telling the President about it in person.[316]

Poindexter testified that the President had approved the nine-point plan as it applied to the U.S. Government. Poindexter contends that the deal with Secord and Kuwait was private.[317] North told Cave of the President's approval.[318] Secretary Shultz testified, however, that when he told the President of the plan, the President gave no indication that he was familiar with it, but "reacted like he had been kicked in the belly."[319] Shultz continued:

> And I told the President the items on this agenda, including such things as doing something about the Dawa prisoners, which made me sick to my stomach that anybody would talk about that as something we could consider doing. And the President was astonished, and I have never seen him so mad. He is a very genial, pleasant man and doesn't—very easy going. But his jaws set and his eyes flashed, and both of us, I think felt the same way about it, and I think in that meeting I finally felt that the President understands that something is radically wrong here.[320]

The President's meeting with Secretary Shultz laid the Iran initiative to rest. The President authorized Shultz to tell Iran that the United States repudiated the nine-point plan and unequivocally rejected further arms sales. Further, Secretary Shultz sent a cable to Kuwait affirming strong U.S. support for Kuwait's refusal to yield on the Da'wa prisoners.[321] The Iran initiative was over.

Chapter 14

1. The Second Channel comprised several persons who, together, provided an alternate route into the Government of Iran. No single individual constituted the Second Channel as the term is used in this report.
2. Israeli Historical Chronology.
3. Cave Memorandum of 6/23/86 telephone conversation with the Second Iranian, N 2402.
4. *Id.*
5. North Notebook, 6/23/86, Q 2229.
6. C 200.
7. Handwritten notes of 6/30/86 telephone conversations with Iranian officials, N 2399.
8. Ex. OLN 48.
9. Israeli Historical Chronology.
10. *Id.*
11. North Notes, Q 2243. According to the Israeli Chronology, Nir expressed doubts to North as to whether the Iranians would effect the release.
12. Allen Dep., 6/29/87, at 476.
13. Cave Int., 9/29/86, at 46-47.
14. Ghorbanifar Letter, July 8, 1986, to the Second Iranian, N 2395.
15. *Id.*
16. Israeli Historical Chronology.
17. *Id.*
18. Ex. JMP 56.
19. Poindexter PROF, 7/26/86, to McFarlane, N 12577.
20. *Id.*
21. Ex. JMP 56.
22. *Id.*
23. *Id.*
24. Israeli Historical Chronology.
25. Ex. JMP 56.
26. Memorandum of OSG/TIWG Meeting, 8/5/86, N 3903.
27. Crowe Dep., 6/18/87, at 4.
28. *Id.*
29. *Id.* at 5.
30. Weinberger Test., 7/31/87, at 132.
31. Crowe Dep., 6/18/87, at 30-31.
32. *Id.* at 7.
33. Crowe Dep., 6/18/87, at 8.
34. Weinberger Test., 7/31/87, at 132-33.
35. Crowe Int., 4/10/87, at 4-5.
36. Craig Fuller notes, 8/6/86, N 2560-62.
37. *Id.*
38. *Id.*
39. *Id.* at N 2561.
40. *Id.* at N 2562.
41. *Id.*
42. North Notes, Q 2314.
43. *Id.*
44. N 44488.
45. North Notes, Q 2339, Q 2340.
46. Israeli Historical Chronology.
47. North Notes, Q 2339.
48. Cave noted on August 15 a conversation with Nir in which Nir raised terms similar to those discussed in London. Cave's notes added, however, that 309 Lebanese Shi'ites were also to be released, C 9516.
49. North PROF, 12/4/85, to Poindexter, N 9910.
50. Israeli Historical Chronology.
51. Allen Dep., 9/23/87, at 7-8; Cave Dep., 4/17/87, at 106-07.
52. Earl Dep., 5/2/87, at 33-38.
53. Cave Dep., 4/17/87, at 244.
54. Allen Dep., 9/23/87, at 7-8.
55. North Notes, Q 2349-51.
56. Allen Dep., 6/29/87, at 533.
57. Secord Test., *Hearings*, 100-1, 5/6/87, at 93.
58. PROF Note from North to McFarlane, 2/17/86 8:54:13, N 12119-20.
59. Tower Int. of C/NE, 1/5/87, at 19.
60. Tower Int. of Cave, 1/5/87, at 5.
61. PROF Note from North to McFarlane, 2/27/86 20:22:22, N 12121.
62. North Test., 7/10/87, at 125-126.
63. Hakim Test., 6/4/87, at 2.
64. *Id.* at 3.
65. Hakim Test., *Hearings*, 100-5, 6/3/87, at 195.
66. Hakim Test., *Hearings*, 100-5, 6/4/87, at 285.
67. Hakim Test., 6/4/87, at 122-23; Nightline Interview, 7/9/87.
68. CIA Cables, C 9926-27; C 9928; C 9929.
69. The First Contact was not "vetted" by the CIA in the usual manner. Instead of being subjected to a CIA-controlled polygraph, the First Contact was tested by a private polygraph company. Wilt Int., 6/22/87, at 2-5. The examiner stated that the test, which was arranged by Hakim and performed on July 14, was inadequate because the information which Hakim provided for the test was insufficiently precise to establish the accuracy of the test. *Id.* Cave stated that one reason the CIA did not itself perform the polygraph was because the Iran initiative was "an NSC operation." Cave Int., 9/29/87, at 35.
70. Memo of CIA meeting with the First Contact, 7/10/86, N 2396.
71. Memo of CIA meeting with First Contact, 7/11/86, N 2398.
72. Hakim Test., 6/4/87, at 90-91. North said that he, too, knew "well the meaning of the term baksheesh . . . and that it is a long established tradition in that part of the world." North understood that, to open a new channel, Hakim would have to satisfy the demands for baksheesh. "Mr. Hakim made it clear that there was a necessity to compensate those engaged in the activity." North, 7/10/87, at 125-26.
73. Hakim Dep., 5/31/87, at 34-35.
74. Hakim Dep., 5/31/87, at 32-35.
75. North Notes, Q 2307.
76. North Notes, Q 2345.
77. Secure telephone message to Secord, 8/26/86, N 2801-02.
78. *Id.* at N 2802.
79. Memorandum from North to Poindexter: Subj: "Next Steps with Iran," 9/2/86, J 5968-70.
80. *Id.* at J 5969.
81. *Id.* at J 5970.
82. PROF Note from North to McFarlane, 9/3/86 20:12:50, N 12156.
83. North Notes, Q 2388.
84. *Id.*
85. North Notes, Q 2395.

86. *Id.*

87. Memorandum from North to Poindexter: Subj: Supplement to Next Steps with Iran, N 2809.

88. Tower B-152.

89. *Id.*

90. CIA Memo to Casey from Allen on American Hostages, 9/10/86, C 9517.

91. The reference to "Paul" is unclear. North's code lists show that at one time David Kimche was referred to as "Paul." Later North himself held this code name.

92. C 9517.

93. *Id.*; Allen Dep., 6/29/87, at 567.

94. C 9517.

95. *Id.*

96. Tower Int. of C/NE, 1/5/87, at 20.

97. The magnitude of the risk later became clear when the Relative told Cave that the Iranians knew throughout the Tehran meeting that Nir was an Israeli. Cave Int., 9/29/87, at 17.

98. Secord Test., *Hearings*, 100–1, 5/6/87, at 99.

99. Secord Test., *Hearings*, 100–1, 5/6/87, at 105.

100. Hakim Test., *Hearings*, 100–5, at 225.

101. Hakim Test., 6/4/87, at 164, 166-67.

102. North Notes, Q 2364.

103. PROF Note from North to McFarlane, 9/3/86 20:12:50, N 12156.

104. Israeli Historical Chronology. Memorandum to Poindexter from North on Meeting with Nir, 9/9/86, N 44515-16.

105. *Id.*

106. North Notes, Q 2413.

107. Secure telephone message from Secord, N 2799-800.

108. *Id.*

109. *Id.*

110. Memorandum for the Record by Allen: Subj: "TOW sales to Iran," J 5957.

111. *Id.*

112. North Notes, Q 2558.

113. North Notes, Q 2397, Q 2404, Q 2407-08.

114. PROF Note from North to Poindexter, 9/17/86 07:56:26, N 18046.

115. PROF Note from North to Poindexter, 9/17/86 12:59:11, J 6094.

116. Secure telephone message to North from Secord, 9/17/86, N 2923.

117. *Id.*

118. Hakim Test., 6/4/87, at 34.

119. Memoranda of conversations of 9/19/86 meetings, N 2842-59 at N 2853-57.

120. *Id.* at N 2853.

121. *Id.* at N 2857.

122. *Id.* at N 2856.

123. *Id.* at N 2849.

124. *Id.* at N 2848.

125. *Id.* at N 2849.

126. *Id.* at N 2849.

127. *Id.* at N 2850.

128. Memorandum to Poindexter from Allen on hostages, 9/8/86, N 2811.

129. Cave Int., 9/29/87, at 23.

130. Memoranda of conversations of 9/19/86 meetings, at N 2856.

131. *Id.*

132. *Id.* at N 2858.

133. *Id.* at N 2848.

134. *Id.* at N 2858.

135. *Id.* at N 2843.

136. *Id.* at N 2852.

137. *Id.*

138. Notes of 9/19/86 meeting, N 2861.

139. Memoranda of conversations of 9/19/86, at N 2852. Although the United States had long before concluded that Buckley was dead and, in earlier meetings with Ghorbanifar, had sought the return of his body, the Relative added a new dimension. He stated that Buckley had been subjected to a "debriefing" by his captors and that a transcript of the interrogation was held by the Iranians. It allegedly ran to over 400 pages and contained 200 to 300 "sensitive names." Other than trying to assess the damage such a transcript might cause, the CIA never systematically attempted to determine whether these assertions were true. Cave Int., 9/29/87, at 76-78. Neither the Committees nor the CIA have any evidence that a transcript of the debriefing exists.

140. Cave Int., 9/29/87, at 73-74.

141. *Id.* at 75-76.

142. N 2862.

143. N 2850-61.

144. Hakim Test., 6/4/87, at 35-36.

145. Hakim Test., 6/4/87, at 8.

146. *Id.* at 8-9.

147. PROF Note, 9/22/86 8:37:02, N 12608.

148. PROF Note from North to Poindexter, 9/22/86 9:22:57, N 18059–60.

149. Memorandum to Poindexter from North: Subj: "Next Steps With Iran," 10/2/86, N 2816-18.

150. *Id.* at N 2817.

151. *Id.*

152. "And the Scripture, foreseeing that God would justify the Gentiles by faith, preached the gospel beforehand to Abraham, saying, 'All the nations shall be blessed in you.' " N 2825.

153. Memorandum to Poindexter from North: Subj: "Next Steps with Iran," 10/2/86, N 2816-18.

154. *Id.* at N 2817.

155. *Id.*

156. *Id.*

157. *Id.* at N 2817.

158. Israeli Historical Chronology.

159. PROF Note from Poindexter to McFarlane, 10/3/86 20:35:35, N 7503.

160. PROF Note, 10/4/86, N 12620.

161. N 2827.

162. North, 7/9/87, at 121.

163. N 2817.

164. Hakim Test., 6/4/87, at 48.

165. Hakim Dep., 5/31/87, at 87.

166. Transcript of Frankfurt meeting, C 312-24 at C 322.

167. *Id.* at C 358-71 at 364.

168. C 368.

169. Memorandum of 9/19-9/20 conversation with the Relative, N 286063 at N 2862.

170. Transcript of Frankfurt meeting, C 372-84 at C 380.

171. *Id.* at C 383.

172. *Id.* at C 384.

173. Kerr Int., 9/23/87, at 3-4.

174. Transcript of Frankfurt Meeting, C 375-76.

175. *Id.* at C 376.

176. *Id.*

177. Poindexter Test., 7/21/87, at 145.

178. Tower at III-18.

179. Transcript of Frankfurt Meeting, C 371.

180. *Id.*

181. *Id.* at 382.

182. Transcript of Frankfurt Meeting, C 400-10 at C 406.

183. The 17 Da'wa prisoners were convicted by the Kuwaiti government of conducting a series of large-scale terrorist attacks in Kuwait on December 12, 1983. Bombing attacks were carried out against the U.S. and French Embassies, a U.S. housing compound, an airline terminal, an oil facility, and a Kuwaiti government office. Six people were killed and 80 wounded. Congressional Research Service Issue Brief on Terrorism, 9/27/87, at 11; "America's Forgotten Hostages," *Newsweek*, 10/20/86, at 39, 47.

184. Transcript of Frankfurt Meeting, C 378.

185. *Id.*

186. North Notes, Q 2486.

187. Transcript of Frankfurt Meeting, C 378.

188. Cave Int., 9/29/87, at 60, 137-41.

189. Transcript of Frankfurt Meeting, C 375.

190. *Id.* at C 408.

191. Although the copy provided by Hakim omitted the last line of the first entry under point 7, Cave identified the list referred to therein as the arms list that the Relative brought to Washington, D.C. Cave Int., 9/29/87, at 142-43.

192. Ex. AH-22.

193. Transcript of Frankfurt meeting, C 10423-33 at C 10425.

194. *Id.* at C 409-10, C 10423-25.

195. *Id.* at C 10426.

196. *Id.* at C 10427.

197. *Id.* at C 10429.

198. *Id.* at C 10431-32.

199. Hakim Test., 6/4/87, at 166.

200. *Id.*, at 164, 166-67.

201. *Id.*, at 174-75.

202. *Id.*, at 167.

203. *Id.*, 6/5/87, at 67. Poindexter testified that he did not think it was "fair" to describe the plan as the "Hakim Accords." Poindexter Test., 7/21/87, at 144.

204. Hakim provided a translation of his own Farsi copy of the nine-point plan to the Committees. It differs in a couple of respects from the translation of the same Farsi document by the Library of Congress. One point at which the two documents differ is in point 4. The Library of Congress translation states that the "one and one-half" hostages are to be released three or four days after the delivery of the 500 TOWs to Iran. This, however, appears inconsistent with the requirement in both the Hakim and Library of Congress version of point 3 which provides that Hakim must produce a plan for the release of all of the 17 Da'wa prisoners before the hostages are to be released.

205. Ex. AH-22.

206. Hakim Dep., 5/31/87, at 202; *Id.*, 5/23/87, at 83; Hakim Test., 6/4/87, at 159-63; *Id.*, 6/5/87, at 119-20.

207. Hakim Test., 6/4/87, at 49.

208. *Id.* at 49.

209. C 9341.

210. PROF Note from North to Poindexter, 10/10/86 21:55:31, N 12176-77. The changes in the Hakim plan may have been negotiated by Secord upon his return to Frankfurt. Cave Int., 9/29/87, at 149-50.

211. N 12176.

212. Shultz Test., 7/23/87, at 160.

213. *Id.* at 184.

214. PROF Note from North to Poindexter, 10/10/86 21:55:31, N 18741-42.

215. *Id.*

216. *Id.*

217. Poindexter Test., 7/21/87, at 144.

218. North Test., 7/13/87, at 247.

219. *Id.* The Da'wa prisoners were sentenced to varying penalties ranging from imprisonment for a term of years, to death. Several prison terms for one group of prisoners will expire sometime this year. Cave Int., 9/29/87, at 152. The release of these prisoners, therefore, would follow Kuwaiti due process norms.

220. Poindexter Test., 7/15/87, at 174.

221. Memorandum of Washington meetings with the Relative, N 2862.

222. Cave Int., 9/29/87, at 137-39.

223. Press Guidance regarding Newsweek article, "America's Forgotten Hostages" N2832-35.

224. *Id.* at N 2833.

225. North Notes, Q 2558-59.

226. *Id.* at Q 2559.

227. Israeli Historical Chronology.

228. *Id.*

229. Secord Test., 5/8/87, at 311.

230. *Id.*, at 121-22.

231. Cave Int., 9/29/87, at 64.

232. Cave likened the struggle between the Iranian Army and the Revolutionary Guards to replacement of the regular army by the Red Army during the Russian Revolution. *Id.* at 63, 64.

233. Ledeen Dep., 6/19/87, at 68-69.

234. Cave Int., 9/29/87, at 65-66.

235. North Notes, Q 2593.

236. Cave Int., 9/29/87, at 69-70.

237. *Id.* at 67.

238. The distribution of the leaflets was attributed to Mehdi Hashemi, a follower of Montazeri. An Associated Press report, carried on September 29, 1987 in the Washington Times, stated that Hashemi had been executed after having been convicted of numerous crimes.

239. Transcript of Mainz meeting, C 255-72 at C 256.

240. *Id.*

241. Transcript of Mainz meeting, C 273-311 at 305.

242. *Id.* at 289.

243. *Id.* at 258.

244. *Id.* at 284.

245. North Test., 7/9/87, at 121.

246. Transcript of Mainz meeting, C 10451-71 at C 10458.

247. *Id.*

248. C 322, 323.

249. C 10455. The Iranians had been seeking Phoenix missiles through the Iran initiative since September 1985. Allen Dep., 4/21/87, at 67.

250. C 10439.

251. C 10456.

252. C 10462.

253. C 10468.

254. C 10437.

255. C 10465.

256. C 10466.

257. C 10442.

258. C 10466.

259. C 10454.

260. Allen Memorandum on Frankfurt meeting, 11/3/86, C 9519-23 at C 9522.

261. C 10462.

262. C 10463.

263. Cave Int., 9/29/87, at 163.

264. C 317.

265. C 317.

266. C 318.

267. C 320.

268. C 320.

269. N 2850.

270. C 292.

271. C 294. Cave agreed with this assessment when he stated that by the time of the February meeting in Frankfurt, the Iranian factions had agreed to act jointly in the overture to the Americans. Cave Int., 9/29/87, 169-70.

272. C 294.

273. N 9322-23. This memorandum bears Charles Allen's name but both Cave and Allen agree that Cave wrote it. Allen Int., 9/23/87, at 30-31; Cave Int., 9/29/87, at 166.

274. Cave explained that the Engine represented one group while the Second Iranian represented another. A third, Rafsanjani's group, was represented on the Commission by the Majlis member and the Adviser. Cave Int., 9/29/87, at 169-70.

275. *Id.* at 67.

276. C 10445.

277. *Id.*

278. PROF Note from Earl to Poindexter, 10/29/86 22:23:43 N 18446.

279. *Id.*

280. *Id.*

281. PROF Note, 10/29/86; Tower at 172.

282. Secure telephone message from Secord to North, N 8084.

283. PROF Note, 11/4/86, 09:35:58, N 17560.

284. North Notes, Q 2609.

285. North Notes, Q 2596.

286. C 9480.

287. Cave notes on Geneva meeting, C 9526-29 at C 9527.

288. *Id.*

289. *Id.* at C 9528.

290. *Id.* North's notebooks for this period refer to a "6 step Kuwaiti plan." Q 2603. Cave did not know what the "6 step plan" comprised. Cave Int., 9/29/87, at 171-72.

291. C 9528.

292. The Engine claimed that the hostages were in the hands of the Jihad-i-Islami (or Islamic Jihad Organization or "IJO"), who were more responsive to Syria than to Iran. North Notebooks for November 8-10 period, Q 2605-06; C 9528.

293. North Notes, Q 2607.

294. North Notes, Q 2610.

295. North Notes, Q 2618.

296. Secure telephone message from North to Hakim, N 8090.

297. Cave said that Iranians do not apply the term "His Holiness" to the Imam. Cave Int., 9/29/87, at 83-84.

298. N 8090.

299. Shultz Test., 7/23/87, at 96-97.

300. Shultz Test., 7/23/87, at 105-07, 109.

301. Shultz Test., 7/23/87, at 109, 116-17.

302. North Notes, Q 2619.

303. North Notes, Q 2650; Israeli Historical Chronology. According to the Israeli Chronology, Nir was astonished by North's request and replied that Israel would not lie but would state only the truth, that Israel never transferred money to the Contras.

304. Memorandum from Allen to Casey on Terms of Reference for Cave/Dunbar discussions, 12/12/86, C 9532.

305. Shultz Test., 7/23/87, at 119.

306. Shultz Test., 7/23/87, at 122.

307. Memorandum of phone call from Dunbar in Frankfurt regarding "Iran Caper," S 3878-80 at S 3878.

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. Shultz Test., 7/23/87, at 120.

314. Cave Int., 9/29/87, at 180.

315. S 3879-80.

316. Shultz Test., 7/23/87, at 11.

317. Poindexter Test., 7/21/87, at 144.

318. Cave Int., 9/29/87, at 182.

319. Shultz Test., 7/23/87, at 159.

320. Shultz Test., 7/23/87, at 11.

321. Shultz Test., 7/24/87, at 130-31; Ex. GPS-C.

Chapter 15
The Diversion

The term "diversion" entered the vocabulary of American history on November 25, 1986, when the media, covering Attorney General Edwin Meese's press conference, reported a "diversion of funds" for the Contras from the Iran arms sales. The diversion immediately became the focus of the public's attention: Whose idea was it? Who approved it? When? Who knew of it? How much was diverted?

The Committees were able to answer these questions, but only partly, because of contradictions in the record, the destruction of evidence, and apparent forgetfulness by officials.

Lt. Col. Oliver North, Vice Admiral John Poindexter, and Richard Secord all vigorously rejected the term diversion, because it implies that the arms sales proceeds were earmarked for the U.S. Government, and were misappropriated. To North, Poindexter, and Secord, providing assistance to the Contras was only one of a number of intended uses of those proceeds. North named several projects that he was planning to finance from the proceeds.[1] Indeed, Poindexter saw the generation of money for the Contras from the arms sales as no more exceptional than raising money from foreign countries, which the NSC staff had been doing with the President's approval for 18 months. Thus, for North, Poindexter, and Secord, the "diversion" was no diversion. But that was one of the few things upon which they agreed.

Whose Idea?

The generation of profits for covert uses from the sale of arms was not a novel idea when North first seized upon it. Sophisticated weapons bring premium prices in the international grey market for arms, and can thereby create slush funds for improper covert activities that could not be financed through appropriated money.

General John Singlaub had presented such a proposal in a memorandum to North and Director of Central Intelligence William J. Casey during 1985. The memorandum, prepared by Singlaub's associate, Barbara Studley, defined the "problem":

> With each passing year, Congress has become increasingly unpredictable and uncooperative regarding the President's desire to support the cause of the Freedom Fighters despite growing Soviet oppression. The funds have not been forthcoming to supply sufficient arms necessary for the Freedom Fighters to win.[2]

The "objective" was "to create a conduit for maintaining a continuous flow of Soviet weapons and technology, to be used by the United States in support of Freedom Fighters in Nicaragua, Angola, Cambodia. Ethiopia, etc."[3]

The memorandum proposed a three-way trade in which the United States would provide high technology equipment to another country, that country would deliver from its stockpiles military equipment of equal value to a third country, and the third country would export Soviet-compatible arms to a trading company at the direction of the United States. "The United States," the memorandum observed, would then be able to dispense the arms to "Freedom Fighters worldwide, mandating neither the consent or awareness of the Department of State or Congress." The memorandum diagrammed the plan (see Figure 15-1).[4]

North acknowledged receiving this memorandum, but dismissed its significance.[5] * The Singlaub-Studley plan was not implemented, but the idea of using sophisticated U. S. weapons to finance arms for anti-Communist insurgents was known to those working to support the Contras before any proceeds from U.S. sales of arms to Iran were first received.

While Studley was developing her proposal, the Israelis were acting on a different plan. According to the Israelis, North proposed in early October 1985 using the excess funds from the TOW missile sales to support pragmatists in Iran.[6] North testified, however, only that he had reason to suspect that the Israelis were using excess funds for covert purposes.[7]

By the end of November 1985, the Enterprise received a portion of the arms sales proceeds. At North's request, the Israeli intermediaries paid the Lake Resources account $1 million from the proceeds of its August-September TOW shipments. According

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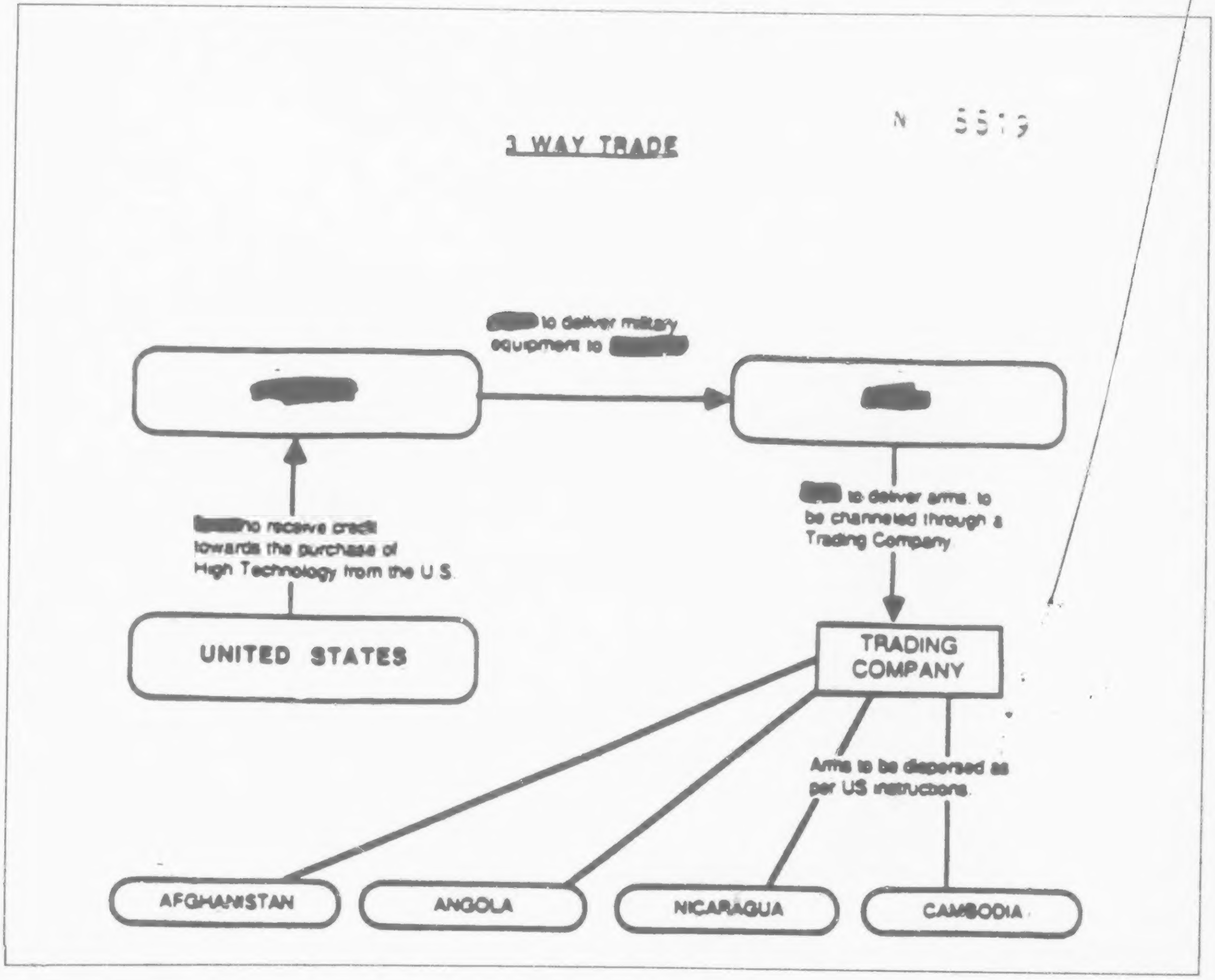
*When Secretary Shultz was shown the Singlaub-Studley plan at the hearings, he responded that, "[t]his is not in line with what was agreed to in Philadelphia. This is a piece of junk and ought to be treated that way." Shultz Test., *Hearings*, 100-9, 7/23/87, at 192.

Figure 15-1. Exhibit JKS-6: 3 Way Trade


N 5519
3 WAY TRADE
[redacted] to deliver military equipment to [redacted]
[redacted]
[redacted]
[redacted] to receive credit towards the purchase of High Technology from the U.S.
UNITED STATES
[redacted] to deliver arms. to be channeled through a Trading Company
TRADING COMPANY
Arms to be dispersed as per US instructions.
AFGHANISTAN
ANGOLA
NICARAGUA
CAMBODIA

to North and Secord, the money was to cover the Enterprise's expenses in arranging five shipments of HAWKs to Iran. But when the deliveries were halted after one shipment, the Enterprise held $800,000 in unexpended funds. North received the Israelis' permission to use the $800,000 for "whatever purpose we wanted," and he directed Secord to spend the money for the Contras.[8]

Thus, by early December, the notion that the Iran sales could be used as a vehicle for financing the Contras was firmly planted in North's mind. On December 6, 1985, North remarked to Israeli Ministry of Defense officials that he needed money and that he intended to divert profits from future Iranian transactions to Nicaragua.[9] * On December 9, North recommended to Poindexter that the United States take control of the arms sales from Israel, and use "Secord as our conduit to control [Iranian intermediary] Ghorbanifar and the delivery operation."[10] This mechanism was adopted in the President's January 17, 1986, Finding, thereby avoiding the Arms Export Control Act requirement of Congressional notification for Israel to continue sales to Iran of the U.S. weapons. The mechanism allowed the CIA to sell arms to Iran directly *or through a "third party,"* although it did not authorize or even mention the generation of profits. Nevertheless, by permitting the CIA to sell through a third party, the Finding created an opportunity for profits to be generated and placed in the hands of the third party—an opportunity that would not have existed if the CIA sold the arms directly. So far as the record shows, this possibility was never suggested to the CIA attorneys who drafted the Finding, nor did Poindexter discuss it with the President in connection with the President's execution of the January 17 Finding.

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*One of the Israeli officials took contemporaneous notes of the meeting, recording North's comment. The two other Israeli officials at the meeting (which dealt mainly with other matters) did not recall the comment by North. Israeli Historical Chronology.

In January 1986, the idea that excess money could be generated by arms sales to Iran surfaced in another way. The Israelis had been promised replenishment of the TOWs they shipped in August-September 1985, but the United States had delayed action on Israel's request. When National Security Adviser Robert McFarlane resigned, North found no agreement on the price Israel was to pay for the replacements. Some Israelis thought that McFarlane had agreed to replenish the TOWs for nothing. NSC consultant Michael Ledeen had quoted a low price,[11] even though certain U.S. Government officials wanted the full price for the more expensive, improved TOWs that Israel wanted. The price for those improved TOWs exceeded the proceeds remaining from Israel's sale of older model TOWs to Iran. According to North, Amiram Nir, the adviser to Israeli Prime Minister Shimon Peres, proposed in January 1986 that Israel use some of the profits from selling additional TOWs to pay for replenishment of the original 504 TOWs.[12] *

When the United States decided in January to sell the additional TOWs through the Enterprise (not through Israel), North and Poindexter agreed that part of the profits would be set aside to pay for the replacement of Israel's previously shipped TOWs.[13] Thus, the plan to divide up the proceeds of the U.S. arms sales to Iran was in place when the January 17 Finding was signed.

North testified, however, that the proposal to support the Contras from arms sales proceeds was first suggested by Ghorbanifar in late January 1986. He did not recall discussing the idea in December 1985 with Israeli Ministry of Defense officials, although he said the "subject may well have come up before [late January], but I don't recall it."[14] According to North, during a meeting abroad with Nir and Ghorbanifar relating to the February 1986 TOW shipment to Iran, "Ghorbanifar took me into the bathroom and . . . suggested several incentives to make that February transaction work, and the attractive incentive for me was . . . that residuals could flow to support the Nicaraguan resistance."[15]

The tape of the meeting shows that the idea of assisting the Contras was, in fact, discussed, not alone with North in the bathroom, but with the whole group present. This fact does not negate earlier consideration by North. Indeed, Ghorbanifar does not seem to have been referring to using the sales proceeds, but rather to Iran's assisting U.S. interests in Central America in return for receiving U.S. military assistance:

> GHORBANIFAR:
>
> (Laughingly)
>
> And we do everything. We do with the hostages for free of charge; we do all terrorists free of charge; Central America for you free of charge; American business free of charge; [First Iranian Official] visit; . . . Everything we do.
>
> NORTH:
>
> I would like to see that, that at some point this idea . . . and maybe, y'know, if there is some future opportunity for Central America. You know that there is a lot of Libyan, a lot of Libyan and Iranian activity with the Nicaraguans.

Regardless of its origin, North believed that using the funds from the arms sales for the Contras was a "neat idea," and he advocated it to Poindexter.[16] He testified that he sought Poindexter's approval upon returning from the meeting with Ghorbanifar and Nir, and that Poindexter pondered the decision for at least several weeks.[17] Poindexter testified, however, that he approved the diversion idea after thinking about it for only a few minutes.[18]

Who Else Knew—a Study in Contradictions

Presidential Knowledge

Although both Poindexter and North testified that they never told the President about the diversion, the substance of their testimony diverges from there.

Poindexter testified that he made "a very deliberate decision not to ask the President" about the diversion in order to "insulate [the President] from the decision and provide some future deniability for the President if it ever leaked out." Although Poindexter asserted that the President would have approved of the diversion as an "implementation" of his policies, he nevertheless chose to protect the President from knowledge of the diversion because it was a "politically volatile issue."[19] Poindexter testified as to the success of his efforts to provide the President with "future deniability" of the diversion. When Poindexter was questioned about the White House statement (issued the day after his initial hearing testimony) that the President would not have authorized the diversion, Poindexter responded: "I understand that he [the President] said that, and I would have expected him to say that. That is the whole idea of deniability."[20]

Poindexter testified that he considered the diversion so controversial that he understood he would have to resign if it ever were exposed.[21] Nevertheless, he also testified that, in approving the diversion, he did not consult Casey, a political expert who had managed the 1980 Reagan campaign, and that, only 2 months after taking office as National Security Adviser, he made this decision on his own. Poindexter had been

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*According to the Israeli Financial Chronology, it was North, not Nir, who made this proposal.

commended in the Navy for keeping his superiors informed.[22] He testified that he had never before withheld information from any of his commanders in order to give them deniability.[23] Moreover, McFarlane, for whom Poindexter had worked for 2 years, assumed that Poindexter would have informed the President.[24] Preempting a decision by the President to provide political deniability—which Poindexter testified that he did—was totally uncharacteristic for a naval officer schooled in the chain of command.

Poindexter testified at his deposition that "I told Colonel North *repeatedly* not to put anything in writing on the transfer of funds to the Contras and not to talk to anybody about it." [25] * Poindexter could not recall any memorandum that referred to the diversion, stating that he was surprised on November 24, 1986, to learn that a written document showing the diversion had been found.[26] He claimed that he never saw the early April diversion memorandum before then, although North's secretary Fawn Hall recalled that Poindexter had returned a draft of that memorandum with changes.[27] ** Even when confronted with a PROF message, dated April 7, 1986, from North to McFarlane, which referred to the memorandum and stated that Poindexter had asked North to "lay out arrangements for our boss," Poindexter maintained that he never asked North to prepare the document.[28] *** Consistent with this testimony, Poindexter did not recall North ever telling him in November 1986 or any other time that all memorandums referring to the use of the arms sales proceeds to support the Contras had been destroyed.[29]

In essence, Poindexter's story on Presidential knowledge of the diversion was that he had constructed a situation whereby only he and the President would know whether the President had been advised of the diversion.[30] In this regard, Poindexter testified that he never told North that the President was not privy to the diversion decision.[31]

In contrast, North testified that he always "assumed that the President was aware of [the diversion] and had, through my superiors, approved it." [32] North estimated that he prepared as many as five or six memorandums in final form referring to the use of the arms sales proceeds for the Contras. These memorandums went "up the line" to Poindexter and covered each actual or proposed arms transaction for which payment would be received.[33] The use of proceeds was described in only one paragraph in each memorandum. North's memorandums concluded with the recommendation that Poindexter brief the President to secure approval for the transfer and provided lines on which someone could indicate whether the transfer had been "approved" or "disapproved." [34] North further testified that he did not recall any instruction from Poindexter or anybody else not to write and send such memorandums, adding that "had I been given [such an instruction], I would have followed it." [35] Instead, North created records such as the surviving copies of the April diversion memorandum that called for Presidential briefings and approval.*

North was unequivocal that the April 7 PROF message referred to the diversion memorandum prepared by him in early April 1986 and uncovered by the Justice Department in November.[36] North also testified that Poindexter had communicated approval either orally or in writing on at least three of the diversion memorandums, and that he believed that he "had received authority from the President." [37] Finally in this regard, he testified that early on November 21, 1986, he assured Poindexter that all documents referring to the use of proceeds for the Contras had been destroyed.[38]

North assumed without asking Poindexter explicitly that the President knew and approved of the diversion. North had worked under three National Security Advisers. Based on that experience, he concluded that a decision of this magnitude would be taken only with Presidential approval[39]—a view that McFarlane shared.[40]

North told Secord that he had conversations with the President about the irony that the Ayatollah's money was being used to support the Contras. Secord testified that North did not convey these conversations "in a way that I took it as a joke." [41] North testified that he had no such conversation with the President, but told Secord otherwise in an effort to lift Secord's spirits.[42] There is no evidence that North did tell the President about the diversion; according to White House records, he never met alone with the President.

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*In his public testimony—after North's public appearance—Poindexter attempted to retreat from this definitive statement in his deposition. He testified publicly that he did not recall telling North not to put anything in writing on the diversion. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 44.

**In his post-North public testimony, Poindexter softened this testimony somewhat by stating that "[i]t appears that it is possible that I saw one [diversion] memo. . . ." Poindexter Test., *Hearings*, 100-8, 7/17/87, at 135; 7/20/87 at 282.

***He speculated, however, that North might have prepared such a memo in response to a request for an outline of the upcoming trip to Tehran in May. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 44.

* In his first deposition before the Committees, James R. Radzimski, the NSC's System IV Control Officer in 1985 and through October 1986, recalled two such North memorandums to Poindexter discussing the diversion—one in late 1985, the other in mid-April 1986. Radzimski recalled also that the April memorandum attached a proposed memorandum from Poindexter to the President. Radzimski Dep., 4/29/87, at 54-57, 68-74. The Committees directed an exhaustive search of White House files and computer entries, in which the FBI participated, but no evidence was found to corroborate Radzimski's testimony. Further, Radzimski's own document log did not support his recollection. Radzimski Dep., 8/11/87, Ex. 3. Accordingly, the Committees recalled Radzimski for further deposition, where he testified that there was a "distinct possibility" his recollection "is not completely accurate." Radzimski Dep., 8/11/87, at 33.

North said that he continued until November 21, 1986, to assume that the President had approved the diversion. He testified that, on or about that day, he asked Poindexter directly, "does the President know?" He told me [the President] did not." [43] North testified that the President confirmed this lack of knowledge on November 25 when the President told him by telephone that, "I just didn't know." [44] Robert Earl, North's aide, testified that North had told him that the President had said "it is important that I not know." [45] Lt. Cmdr. Coy, the third officemate, who was also present, did not recall any conversation about the President's knowledge.[46] Fawn Hall testified that North told her that the President had "called him an American hero" and said that "he [the President] just didn't know." [47]

Except for the April memorandum, the memorandums that North claimed he sent Poindexter are gone. North testified that he destroyed them. Three drafts of the April memorandum were found in various locations in North's files. They are identical except for the precise date of the Israeli September 1985 TOW shipment on the first page.[48]

Memorandums for the February, May, and October 1986 shipments, describing the use of the proceeds, do not exist. If they were prepared, they were destroyed.

Casey's Knowledge

Discrepancies about Casey's knowledge of the diversion also abound. Poindexter testified that he "purposely" did not discuss the subject with Casey.[49] Poindexter's reasoning was that Casey frequently had to testify before Congress and he did not want to place Casey in a position of having to lie.[50] Poindexter further testified that he had no indication that Casey was aware of the diversion aspect of the arms sales operation.[51]

North, on the other hand, testified that he "had consulted very carefully with Director Casey [about the diversion], and he . . . was very enthusiastic about the whole program." [52] He stated that he had told Casey of the plan to use the proceeds for the Contras before the fact, and that he had reviewed with Casey (probably in February 1986) at least one memo referring to the diversion before sending it "up the line" for Presidential approval.[53]

While still at the NSC, North made inconsistent statements about Casey's knowledge. He told Earl in the spring of 1986 that Casey knew.[54] But on November 23, when questioned by the Attorney General, North omitted Casey from the list of persons privy to the diversion. According to North, this omission occurred after Casey had suggested a "fall guy plan" in which North and, if necessary, Poindexter would take the blame.[55]

Another CIA official, Charles Allen, became aware as early as January or February 1986 of the possibility of a diversion. Allen effectively acted as Ghorbanifar's CIA case officer from their first meeting in January 1986. Allen's notes record that, early in their relationship, Ghorbanifar told him that money could be generated from the arms sales to support the Contras and other activities. Allen found Ghorbanifar's statements so "far-fetched" and "trivial" that, although he recorded them in his notes, he did not report them to his superiors.[56] *

By the end of August, Allen had focused on the inflated pricing of the arms sold to Iran and the possibility that money might have been diverted to the Contras.[57] Allen shared his concerns that same month with Richard Kerr, the CIA's Deputy Director of Intelligence, who had succeeded Robert Gates. According to Kerr, Allen told him that the United States had overcharged Iran in the sale of HAWK parts and that the excess money had possibly been diverted to assist the Contras.[58] Kerr said that, as best he could recall, Allen did not explain why he believed that funds might have been diverted to the Contras. Kerr told Allen to monitor the situation and keep him apprised of further developments.

Kerr recalls that he recounted Allen's diversion speculation to Gates, who told Kerr that he also wanted to be kept informed about the matter. Kerr took no further steps.[59] **

Allen remained "very troubled in September that the operation was to spin out of control." [60] On September 9, he met with North following a meeting between North and Poindexter on the Iran initiative. North told Allen that the First Channel into Iran was to be shut down, and that the Second Channel had "flourish[ed] into full bloom."

Allen was surprised by this information.[61] He returned to the CIA "very nonplussed because I couldn't figure out why we would so abruptly shut down the first channel unless we had a very good plan for shutting it down in a way that Ghorbanifar and other creditors of Ghorbanifar would feel assuaged . . . ." [62] Nevertheless, the next day Allen reported this conversation to Casey matter-of-factly and without comment, including a flat, unexplained observation that "[t]o cut Ghorbanifar out, Ollie will have to raise a minimum of $4 million." [63]

On October 1, Allen took his worries to Gates. He told Gates that the Ghorbanifar channel was a "running sore," and that he was concerned that the Iran initiative was "going to be exposed if something isn't done." [64] He also told Gates that "perhaps the money has been diverted to the contras." [65] According to

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*Later in the year, George Cave of the CIA grew suspicious when he learned that the Iranians were paying significantly more for the U.S. arms than the CIA was receiving, and heard speculation of a diversion to the Contras. Cave stated in his deposition that he did not report these concerns. Cave Dep., 4/17/87, at 158-59.

**Gates told the CIA Inspector General that he could not recall the meeting in which Kerr apprised him of Allen's suspicions. Kerr Int., 9/23/87, at 6-7.

Allen, Gates was "deeply disturbed by that and asked me to brief the Director." [66] When Allen briefed Casey a week later, he found that Roy Furmark—a business associate of Saudi entrepreneur Adnan Khashoggi's and former client of Casey's—had been there before him.

As discussed more fully in Chapter 18, Furmark and Casey met on October 7.[67] Although Furmark knew of Ghorbanifar's speculation about the diversion, it is not clear that he shared this speculation with Casey. Furmark's testimony before the Senate Select Committee on Intelligence is somewhat inconsistent on this point.[68] North testified that Furmark had told Casey in early October about the speculation surrounding the diversion to the Contras.[69]

In any event, according to North, the meeting with Furmark triggered Casey to instruct North "that this whole thing was coming unravelled and that things ought to be 'cleaned up' . . ." In response, North testified that he "started cleaning things up"; he "started shredding documents in earnest after [this] discussion with Director Casey in early October . . . ." [70]

When Allen and Gates met with Casey on October 7, Casey did not mention that funds might have been diverted to the Contras.[71] According to Gates, however, "Allen shared his speculation with the Director about the possibility that some of the money was being diverted to the Contras. The Director told him to put all of that down on paper." [72]

Allen's October 14 memorandum did not expressly allege that the profit from the arms deals might have gone to the Contras. Instead, the memorandum recorded Ghorbanifar as stating that, "some of . . . [the] profit was redistributed to other projects of the US and of Israel." [73]

At Casey's direction, Allen and Furmark met on October 16. However, it was not until a subsequent meeting on October 22 also at the CIA, among Allen, George Cave (also of the CIA), and Furmark that Furmark raised, for the first time with Allen, the possibility that funds might have been diverted to the Contras.[74] Allen and Cave reported the substance of this latter meeting to Casey, who appeared "deeply disturbed" by what he was told.[75]

Allen and Cave then jointly prepared a memorandum for Casey to send to Poindexter. This memorandum referred to Ghorbanifar's accusation, which Furmark had repeated, that some of the "bulk of the original $15 million price tag was earmarked for Central America." [76] The memorandum "laid out starkly . . . that Ghorbanifar had made allegations of diversion of funds to the Contras." [77]

Although Casey spoke to Poindexter by secure telephone about the October 22 meeting, the Allen-Cave memorandum never reached Poindexter. According to Allen, the memorandum "fell into the wrong outbox," and was not discovered until November 25.[78]

Allen and Furmark met once more, on November 6. By this time, the publicity of the Iran initiative had occurred. The following day, Allen prepared a memorandum for Casey which reported, among other things, that Furmark had again alerted Allen to the link between the overcharges on the HAWK spare parts and the diversion.[79] On this point, Allen concluded reassuringly that "much of what they know is speculation and cannot be proven." [80]

At Furmark's request, Casey met with him again on November 24 at CIA headquarters. Furmark and Casey reviewed the finances of the Iran arms transactions, and established that the transactions had resulted in excess money. Casey told Furmark that he did not know where the excess had gone.[81]

Before Casey suffered a stroke on December 15, 1986, he maintained that he had not known of the diversion prior to the Attorney General's press conference.[82] He died on May 6, 1987.

How Much Was Diverted?

Even the amount of arms sales profits that were used, and that were intended to be used, for the Contras is the subject of contradictory testimony. The Committees have concluded that at least $3.8 million of the $16.1 million in arms sales profits were used for Contra assistance.[83] Poindexter testified that he believed the entire surplus was used for that purpose.[84] In contrast, North testified that the surpluses were to be used for a number of other covert projects, and that Secord and his partner, Albert Hakim were entitled to a fair profit.[85]

Secord and Hakim testified that no agreement existed on how much of the money would be used for the Contras: it was within their discretion whether to accept or reject any request for expenditure by North. North and Poindexter were both surprised that the Enterprise still has more than $8 million. Poindexter was repeatedly told by North that Secord was losing money, and he assumed that all of the Enterprise's funds had been spent.[86]

Whatever the amount or expectations, the diversion did occur. Money generated by arms sales authorized by a Presidential Finding for only one covert purpose—the Iranian initiative—was used for a wholly different covert purpose—Contra support. Arms-for-hostages also became arms-for-Contras, a purpose that was not authorized by any Finding and that was proscribed by the Boland Amendment for appropriated funds.

Chapter 15

1. North Test., *Hearings*, 100-7, Part I, 7/10/87, at 314-15.
2. Ex. JKS-6.
3. *Id.*
4. *Id.*
5. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 73-74.
6. Israeli Historical Chronology.
7. North Test., *Hearings*, 100-7, Part I, 7/10/87, at 295-96.
8. Secord Test., *Hearings*, 100-1, 5/6/87, at 95-96. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 55-56. According to the Israeli Chronologies, North and Secord told the Israelis only that the money was needed for shipping expenses.
9. Israeli Historical Chronology.
10. N 28749.
11. Koch Test., *Hearings*, 100-6, 6/23/87, at 70-71.
12. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 106.
13. *Id.* at 113-14.
14. *Id.* at 295-96.
15. *Id.* at 106-07.
16. *Id.* at 107-08.
17. *Id.* at 298.
18. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 36; Poindexter Dep., 5/2/87, at 71.
19. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 37.
20. *Id.* at 169.
21. *Id.*
22. Ex. JMP-100.
23. Poindexter Dep., 6/18/87, at 448.
24. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 68-69.
25. Poindexter Dep., 5/2/87, at 182 (emphasis added).
26. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 44, 47; Poindexter Dep., 5/2/87, at 116, 178.
27. Hall Test., *Hearings*, 100-5, 6/8/87, at 477.
28. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 44; Poindexter Dep., 5/2/87, at 188.
29. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 116.
30. Poindexter Dep., 5/2/87, at 72.
31. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 41.
32. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 10.
33. *Id.* at 11-12.
34. *Id.* at 14-15.
35. *Id.* at 12.
36. *Id.* at 14.
37. *Id.* at 12.
38. *Id.* at 19.
39. *Id.* at 10.
40. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 68-69.
41. Secord Test., *Hearings*, 100-1, 5/6/87, at 136-137.
42. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 26-27.
43. *Id.* at 10.
44. *Id.* at 93.
45. Earl Dep., 5/22/87, at 145-47.
46. Coy Dep., 3/26/87, at 79-80.
47. Hall Test., *Hearings*, 100-5, 6/8/87, at 506-507.
48. Exs. OLN-283A, OLN-283B, OLN-283C.
49. Poindexter Dep., 5/2/87, at 173, 187.
50. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 43.
51. *Id.* at 345-46.
52. North Test., *Hearings*, 100-7, Part I, 7/9/87, at 240-41.
53. *Id.* at 134, 249-50.
54. Earl Dep., 5/2/87, at 37.
55. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 40-41.
56. C 184-85.
57. Allen Dep., 4/24/87, at 259.
58. Kerr Int., 9/23/87, at 6.
59. *Id.*
60. Tower, at B-168.
61. Allen Dep., 4/24/87, at 452.
62. *Id.* at 453.
63. C 9517.
64. Tower, at B-168.
65. *Id.*
66. *Id.*
67. Furmark Dep., 7/22/87, at 122.
68. Furmark, SSCI Test., at 70, 73.
69. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 19.
70. *Id.*
71. Tower, at B-168.
72. Gates, Tower Test., at 19.
73. N 10.
74. Furmark Dep., 7/22/87, at 141.
75. Allen, Tower Test., at 33.
76. I 196.
77. Tower, at B-169.
78. *Id.* at B-169-70.
79. C 9371.
80. I 9372.
81. Furmark Dep., 7/22/87, at 167-69.
82. Ex. EM-53.
83. *See* Chapter 22.
84. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 105.
85. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 4-5; see Chapter 22.
86. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 260.

2K

Chapter 16

Summary: The Iran Initiative

It was not a mistake for the President to seek an opening to Iran. Nor was it an error for the President to seek the release of kidnapped American citizens. What was wrong with the Iran initiative was the way in which the Administration tried to achieve these objectives.

The Administration had pledged that the United States would not bargain with terrorists. This Nation would not make concessions in exchange for American hostages, because such concessions could only encourage more kidnapping. Painful as the consequences might be, the Administration had recognized that the United States could not undermine its foreign policy to win the freedom of its captive citizens—for otherwise, the entire Nation would be held hostage.

Similarly, the Administration had recognized that it was not in the Nation's interest to prolong the Persian Gulf War and strengthen the hand of the Ayatollah against Iraq. The Administration had therefore pledged that the United States would not arm either side, but would maintain a policy of strict neutrality, and would urge U.S. allies and friends to do the same.

The Iran initiative broke both of these pledges and violated both of these policies.

It is true, of course, that policies are subject to change. Foreign policy is not immutable. But when policies are thought ripe for change, established processes exist in the U.S. Government for making informed judgments. These processes are not mere formalities. They are intended to draw on the knowledge and expertise of accountable officials, and to produce reasoned determinations. In the Iran initiative, those processes were deliberately bypassed, and deception replaced consultation.

The President undertook the arms initiative in 1985 against the advice of his own Secretaries of State and Defense, without obtaining the views of intelligence community professionals, and without adequate analysis. Secretary of State Shultz warned that the proposed initiative amounted to trading arms for hostages. Secretary of Defense Weinberger warned in 1985 that it violated the law. Both Cabinet officers rejected the notion that the United States could use the leverage of arms sales to open a new relationship with Iran. A draft National Security Decision Directive proposing the new arms policy was dropped. And the Central Intelligence Agency warned that the proposed interlocutor of the new relationship, Manucher Ghorbanifar, was a talented fabricator. There was, in short, no adequate basis for reversing U.S. policy against arms sales to Iran or concessions to terrorists. Yet the plan proceeded.

The manner in which the President made his decision epitomized the larger problem. His decision was at once too casual and too influenced by emotional concern for the hostages. It constituted a major shift in U.S. policy, yet it was not recorded in any writing. Public knowledge of the original decision comes almost entirely from Robert McFarlane, whose recollection has fluctuated. Reasoned analysis was sacrificed for the sake of secrecy and deniability. The President's decision was therefore never fully exposed to the members of the National Security Council itself. Secretary Shultz, for example, argued against the proposed policy in December 1985 and January 1986 at three White House meetings, unaware that the President had signed Findings authorizing the arms sales prior to each of those meetings. Secretary Weinberger believed during 1986 that the United States would ship no more than 500 TOWs unless and until all the hostages were released, unaware that the United States had in fact shipped 1,500 TOWs plus HAWK spare parts to obtain the release of just two hostages.

The results in these circumstances were predictable. Indeed, given the manner in which the Iran initiative was conceived and conducted, there is no mystery in why it failed, only in why it continued, particularly when promise after promise was broken by the Iranian side:

- At least four hostages were to be released in September 1985 after Israel shipped the 504 TOWs. But only one was.
- All of the hostages were to be released in November after Israel shipped the HAWK missiles. But none was.
- The Speaker of the Iranian Parliament, Hofshan Rafsanjani, was to meet McFarlane during his Tehran trip. But Rafsanjani never appeared.

- All of the hostages were to be released when the United States completed the delivery of the HAWK parts in 1986. But only one was.

- The Iranians were to release one hostage and to exert best efforts to release another after the United States shipped 500 more TOWs in October 1986. But only one was released, while the Iranians demanded additional weapons before they made any effort to release a second.

As Secretary Shultz testified, "[o]ur guys, . . . they got taken to the cleaners." [1] Indeed, by the end of the initiative, the Administration had yielded to virtually every demand the Iranians had ever put on the table. Concessions that the Administration was unwilling even to consider in 1985, it made in 1986. No price seemed too high to North and Poindexter, not even promises to help overthrow the Government of Iraq or to pressure Kuwait into releasing the murderous Da'wa terrorists. And in the meantime, three more Americans were kidnapped in Lebanon.

The record affords some explanation of why the Administration persisted—and capitulated—when the Iranians repeatedly reneged: the decisionmakers were moved by different objectives in hopeless conflict with one another. The goals of freedom for the American hostages and better relations with Iran required that the United States create trust in Tehran. But generating surpluses for the Contras and other secret operations required that the United States overcharge the Iranians. Stinging the Ayatollah may have provided some ironic laughter in the Old Executive Office Building, as North testified, but it was no basis for building an improved relationship with Iran or for gaining release of the hostages. North boasted that, "I lied every time I met the Iranians." [2] But the Iranians North was so willing to deceive were the same people the Administration was depending on to foster a new relationship with Tehran.

With these thoughts in mind, the Committees now examine the record in greater detail for the reasons that the President and his advisers continued the Iran initiative long after the handwriting was on the wall.

The Attorney General's Advice

Attorney General Edwin Meese advised the President that he did not have to notify Congress before selling arms to Iran.[3] The Attorney General based this advice on an opinion of his predecessor, William French Smith, who concluded that the President could export arms pursuant to a Finding, without complying with the Arms Export Control Act.[4] But Attorney General Smith's opinion explicitly stated that the President should notify the Intelligence Committees before the arms were actually exported.[5] Meese took this advice one step further and approved the sales without advance notification.

In taking this aggressive position, the Attorney General, out of concern for secrecy did not consult with the Office of Legal Counsel in the Justice Department or with any of his aides. He did no research on legislative history, and his advice was not reduced to writing.[6] The Attorney General appears to have done little more than to express his "concurrence with the CIA view." [7]

The sale of arms pursuant to a Presidential Finding without prior notification to the Intelligence Committees or Congress itself was, so far as the Committees can determine, unprecedented. The President was entitled to more careful legal advice from the Attorney General before the President approved the sales. The Committees believe that sound analysis and judgment would have led Attorney General Meese, like his predecessor, to advise the President that the Intelligence Committees had to be notified.[8] Had the President been required to take this step, he may well not have proceeded with the sales, and the President and the country would have been spared serious embarrassment.

The Attorney General served as a member of the NSC by appointment of the President. There is only one reason to have an Attorney General on the NSC: to give the President independent and sound advice. That did not happen in the Iran Affair, and the President was poorly served.

The Hostage Objective

In his address to the Nation on August 12, 1987, the President stated:

> [O]ur original initiative got all tangled up in the sale of arms, and the sale of arms got tangled up with the hostages . . . . I let my preoccupation with the hostages intrude into areas where it didn't belong.

The record supports this candid self-criticism.

Freeing the hostages was a primary objective for the President in the Iran initiative. It was foremost in his mind. Yet the President failed to see that, by pursuing this objective through the sale of arms, the Administration was violating its own basic principles, and putting all the cards in the terrorists' hands. The Administration, in effect, was creating an incentive for the Iranians to continue escalating their demands, and worse, to continue kidnapping Americans.

The President seems to have been vulnerable to the pleas of the hostage families. His aides sought to keep those families from meeting with him. But this quarantine ended in June 1985, when the President held the first of several meetings with the hostage families.

Although the President was also undoubtedly interested in promoting moderation of Iranian policies and opening a new relationship with that regime, his primary focus throughout the venture was on the hostages. Indeed, North told the Attorney General in November 1986 that, with the President, "it always came back to the hostages."[9] And to be sure, from the very outset in the summer of 1985, the NSC staff stressed that the initiative could lead to the release of the hostages.

Perhaps the best expression of the President's concern was his statement at the December 7, 1985, meeting with members of the NSC. There, as recalled by Secretary Shultz, the President brushed aside arguments that the arms sales might violate the Arms Export Control Act with the statement that "the American people will never forgive me if I fail to get these hostages out over this legal question."[10]

The Iranians preyed on the President's vulnerability with threats to kill the hostages if the arms sales stopped. North's reports of these threats—which he may well have exaggerated—came at crucial moments. For example, after McFarlane's trip to London in December 1985, McFarlane thought the initiative was dead. He discounted Ghorbanifar's warning that the Iranians might kill the hostages if the Americans refused to sell additional arms unless the hostages were first released. McFarlane's response was to recommend against further dealings with Ghorbanifar. North, however, reported the threat to Washington and recommended more arms sales. The President directed that the initiative proceed.

Eight months later, in August 1986, after the Iranians had reneged on additional promises, North warned again that the hostages might be killed if the United States did not deliver the remaining HAWK parts. With the suggestion that the blood of the hostages would be on his hands, the President ordered delivery of the remaining HAWK parts. Tragically, and ironically, the lives of the captive Americans had now become hostage to an initiative that was intended to free them. The United States was now providing arms not only to obtain the freedom of the hostages, but also to keep harm from befalling them.

The President's concern for the hostages was translated by North into political terms. For example, according to Noel Koch of the Defense Department, North told him in the fall of 1985 that the President was "driving [North] nuts" to get the hostages "out by Christmas."[11] Although North testified that he did not recall such a conversation with Koch or the President, he said that "it was clear that the President wanted as many hostages home, all of them home, as fast as possible."[12] Also, North wrote in his notebook that the hostages should be released in time for the President's 1986 State of the Union message.[12a] Then, North wrote of achieving a release in time for the President's July 4 appearance at the Statue of Liberty Centennial.[12b] And Hakim testified that, before he negotiated the infamous nine points, North told him that the President wanted the hostages home by election day.[13] North admitted that he may have made this statement to Hakim, but said that the President had never made any such statement to North.[14]

The Committees do not fault the President for his concern about the hostages. It is a testament to the values of this Nation that the leader of the greatest power on Earth would devote so much energy and thought to the fate of six citizens. But when fundamental foreign policy decisions are sacrificed in the hope of freeing six hostages, then the Nation itself becomes the victim. Every American who travels abroad becomes a potential hostage, and U.S. policy can be dictated by hostage-takers.

As the President himself now recognizes, emotion must never be allowed to substitute for judgment in the conduct of U.S. foreign policy. The stakes are simply too great.

The Position of Israel

Israel's sponsorship of the Iran initiative, and of Ghorbanifar as an intermediary, carried great weight with the President and his advisers. Israel has taken a strong stand against international terrorism; and Israeli intelligence services are among the most respected in the world. McFarlane turned to Israel in the spring of 1985 for intelligence on Iran because of dissatisfaction with CIA capabilities.

The Israelis strongly advocated the initiative, viewing it as a joint U.S.-Israel operation, and were willing to give the United States deniability—so long as it did not subject them to criticism by Congress and the Secretary of State was fully informed. McFarlane and Poindexter discussed with the Israelis at various times in 1985 the Administration's view that, since Israel—and not the United States—was selling to Iran, U.S. policy was not being violated.

Moreover, the Israelis made a particularly attractive proposal in January 1986 when Nir told Poindexter that if the hostages were not released after the delivery of another 500 TOWs, Israel would bear that loss and the United States would not have to replenish the Israeli inventory. Even after this "no lose" proposition was rejected in favor of the United States selling to Iran through Secord, Amiram Nir continued to urge the initiative.

Yet, the President was under no illusion that the interests of the United States and Israel were synonymous. As early as June 1985, Secretary Shultz had pointed out to McFarlane that Israel had little to lose by promoting the initiative: it had no policy against arms sales to Iran, and, given the hostility of most of its neighbors, Israel was more willing to gamble on the prospect of changes in the Iranian Government.

No foreign state can dictate the conduct of U.S. foreign policy. Superpowers make their own decisions. And the United States did so in this instance. Nevertheless, Israel's endorsement of the Iran initiative cannot be ignored as a factor in its origin or in its continuation.

The Contra Objective

If Israel had its own interests in promoting the initiative, and if the President was preoccupied with the hostages in pursuing the initiative, North was obsessed with the Contras. From North's first substantive involvement with the arms sales in the fall of 1985, the initiative produced money for the Contras.

Thus, the Israelis paid the Enterprise $1 million for the cost of delivering 120 HAWKs in November 1985. When only 18 were delivered at a cost of approximately $200,000, the Enterprise had $800,000 left in the bank. With the Israelis' permission to use this money as the United States wished, North directed Secord to spend the $800,000 on Contra support.

In late November 1985, Secord learned during his visit to Israel that the earlier TOW sales had generated proceeds that Nimrodi and Schwimmer, the Israeli arms dealers, used for purposes other than purchasing the HAWKs. The idea was catching. One month later, on December 6, North told Israeli officials that the United States expected to generate a profit on future arms sales to be used in Nicaragua.

After the Enterprise became the selling agent for the CIA in January 1986, North set prices to create a surplus for the Contras. He and Secord used a markup of more than 200 percent. And when the Tehran mission failed, North sought to cheer up McFarlane with the news that the arms sales had at least achieved some benefit—they were subsidizing the Contras.

It is not necessary, however, to rely on inference for the effect of profits on North's recommendations to continue the weapons sales. North testified that when he was beginning to doubt the wisdom of the initiative in January 1986, he found the opportunity to support the Contras from the proceeds of future sales an "attractive incentive" to continue.

North's promotion of the initiative continued to the end, as he drafted memorandums to Poindexter for the President, always recommending that the initiative proceed, warning that the hostages might be killed if it ended, and predicting ultimate success in retrieving the hostages if the United States stayed the course. There is no evidence that North ever saw or understood that gouging the Iranians on behalf of the Contras was at cross purposes with gaining freedom for the hostages. Arms-for-hostages and profits-for-Contra-support were conflicting goals that could not be reconciled.

The Profit Objective

While North sought profits for the Contras (and other covert operations), Albert Hakim sought profits for himself. He made no secret of his personal motive to North or to George Cave of the CIA in promoting the Second Channel as a means of continuing the collapsing initiative.

Above all, Hakim was a businessman. He candidly testified that he saw an opportunity to make a 3 percent piece of the annual $15 billion Iranian market if the Second Channel initiative succeeded. While Hakim saw no conflict between his personal interests and those of the United States, he negotiated the nine-point agreement as if basic principles were commodities open for trade. This unappointed diplomat was willing to bargain away the most fundamental precepts of U.S. foreign policy to open the doors for business with Iran.

The fault, however, does not lie with Hakim. He was left by North to negotiate the agreement; his plan was approved by North and Poindexter, and according to Poindexter, by the President (who was not told that Hakim had negotiated it); and his ulterior purposes were well known.

Arms-for-profit thus entered the list of colliding objectives in the Iran initiative. Privatization of foreign policy had its costs.

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Too many drivers—and never the right ones—steering in too many different directions took the Iran initiative down the road to failure. In the end, there was no improved relationship with Iran, no lessening of its commitment to terrorism, and no fewer American hostages.

The Iran initiative succeeded only in replacing three American hostages with another three, arming Iran with 2,004 TOWs and more than 200 vital spare parts for HAWK missile batteries, improperly generating funds for the Contras and other covert activities (although far less than North believed), producing profits for the Hakim-Secord Enterprise that in fact belonged to the U.S. taxpayers, leading certain NSC and CIA personnel to deceive representatives of their own Government, undermining U.S. credibility in the eyes of the world, damaging relations between the Executive and the Congress, and engulfing the President in one of the worst credibility crises of any Administration in U.S. history.

Chapter 16

1. Shultz Test., *Hearings*, 100-9, 7/23/87, at 72.
2. North Test., *Hearings*, 100-7, Part I, 7/9/87, at 231.
3. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 31-33.
4. *Id.*
5. Meese Test., *Hearings*, 100-9, 7/28/87, at 205.
6. *Id.*, at 205-06.
7. *Id.*, at 205.
8. See chapter 27.
9. Ex. EM-47, *Hearings*, 100-9.
10. Shultz Test., *Hearings*, 100-9, 7/23/87, at 31-32.
11. Koch Test., *Hearings*, 100-6, 6/23/87, at 69.
12. North Test., *Hearings*, 100-7, Part I, 7/10/87, at 287.

12a. North Notebook, 1/13/86, Q 1438.

12b. North notebook, 7/2/86, Q 2243.

13. Hakim Test., *Hearings*, 100-5, 6/4/87, at 292-93.
14. North Test., *Hearings*, 100-7, Part I, 7/10/87, at 287.

Part IV
Exposure and Concealment

Chapter 17
Exposure and Concealment: Introduction

The covert operation to support the Contras had been functioning for over a year when, on October 5, 1986, one of the resupply planes was shot down in Nicaragua with Eugene Hasenfus on board—and the secret program began to unravel.

Administration officials denied both publicly and in testimony to Congress that the U.S. Government had any connection to the Hasenfus flight. Nonetheless, investigations were commenced by the FBI and the Customs Service, which, if continued uninterrupted, might have uncovered both the Contra and Iran covert actions and Secord's Swiss bank accounts. North and Poindexter moved promptly to delay and narrow those investigations.

At about the same time, a threat of exposure came from a different quarter. Roy Furmark, a business associate of Saudi financier Adnan Khashoggi and a former client of CIA Director Casey, told Casey that Khashoggi and two Canadian investors had lost $10 million on the Iran arms sales. He warned Casey that the Canadians might sue for return of the $10 million, claiming that the money had been used by the U.S. Government for activity in Central America. According to North, Casey advised him at about this time to destroy documents relating to the covert Contra support operation.

Then, on November 2, 1986, David Jacobsen was released from captivity in Lebanon—the last of the three Americans to be released as part of the Iran initiative. His release was announced and applauded by the White House on November 3, 1986.

On the same day, a Lebanese magazine, Al-Shiraa, reported that the United States had sold arms to Iran, and that Robert McFarlane had visited Tehran. This report soon surfaced in the American press, evoking strong criticism from all quarters. The President was accused of making concessions to terrorists and of violating the law in selling arms to Iran.

The Administration's first response to the disclosures was silence. Encouraged by Poindexter and others on the NSC staff, the President told his advisers that comment should be withheld so as not to jeopardize release of the hostages.

Silence proved infeasible, however, and the President was forced to comment. The President's first public statement was to assert that the press reports of arms sales to Iran had "no foundation." Shortly thereafter, on November 13, 1986, the President conceded publicly that arms had been sold to Iran, but branded as "wildly false" the charge that he had traded arms for hostages.* The President also denied on November 13, 1986 that the sales violated any laws.

A preliminary Justice Department analysis written on or about November 13, 1986 concluded the sales were lawful because they were done pursuant to an Intelligence Finding signed by the President on January 17, 1986. But the writer of the analysis was unaware that the United States had been involved in shipments of U.S. arms by Israel in 1985 *prior* to any Finding.

The President's advisers discussed the legal problems raised by the pre-Finding Israeli shipments on November 18 and 19, 1986, while preparing for the President's press conference scheduled for the evening of November 19. When the President was asked about the pre-Finding shipments at his press conference, he denied that the United States was in any way involved.

In fact, however, the United States had approved the 1985 Israeli shipments, and a CIA proprietary airline had actually carried a November 1985 shipment of HAWK missiles to Iran.

Nonetheless, in the two days following the press conference, North and McFarlane prepared a false chronology, Poindexter and Casey gave misleading statements and testimony, respectively, to Congressional committees, and McFarlane gave a false statement to the Attorney General, denying in each case that the United States knowingly participated in the pre-Finding Israeli shipments. In the afternoon on November 21, 1986, Poindexter destroyed a key document—a Presidential Finding—which would have exposed these statements as false.

Not all Administration officials participated in this effort to rewrite history. Secretary Shultz argued repeatedly for prompt and full disclosure of the facts. He warned the President directly on November 19

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*The President maintains this position today. He stated in a recent interview that the Iran arms initiative "was not trading arms for hostages" (*The New Republic,* 10/26/87, at 10) despite his concession on March 4, 1987 (in response to the Tower Board findings) that "what began as a strategic opening to Iran deteriorated in its implementation into trading arms for hostages."

and 20 that certain of his subordinates were giving out inaccurate information. Abraham Sofaer, Legal Adviser to the State Department, warned the White House and the Justice Department that a false story was being put forward regarding the November 1985 HAWKs shipment. Provided with this information, the Attorney General sought and received authority from the President to commence an inquiry on November 21.

Shortly after learning of the Attorney General's inquiry, both North and Poindexter destroyed documents. North also altered documents relating to the NSC staff's Contra support operation, and he assured Poindexter that all documents relating to the use of proceeds from the Iran arms sales to support the Contras had been destroyed.

Notwithstanding North's efforts, Justice Department investigators found a memorandum on November 22 that referred to the diversion; and on November 25, the Attorney General and the President made public the fact that arms sales proceeds had been used for the Contras.

The existence of the Enterprise, however, remained a secret until the public hearings of these Committees. North concealed the Enterprise—Secord's companies and Swiss bank accounts—even while admitting to the diversion. He falsely told the Attorney General on November 23, 1986 that the Iran arms sales proceeds had gone directly from the Israelis into accounts set up by Contra leader Adolfo Calero, and omitted any reference to Secord's accounts in which the funds had actually been placed. The Attorney General repeated this incorrect account of the diversion to the public on November 25.

The disclosures made by the Attorney General on November 25 precipitated the President's request for appointment of an Independent Counsel, the establishment of the Tower Board, an investigation by the Senate Select Committee on Intelligence, and the creation of these Committees; and the secret "off-the-shelf" companies used in both the Iran and Contra covert operations were eventually exposed.

Chapter 18

October 1986: Exposure Threatened

The Hasenfus Plane is Shot Down

On October 5, 1986, a C-123 aircraft carrying ammunition, uniforms, and medicine for the Contras was shot down over Nicaragua.[1] One crew member, Eugene Hasenfus, survived and was captured by the Sandinistas. Documents on board the airplane connected it to Southern Air Transport (SAT), a former CIA proprietary charter airline based in Miami, Florida.[2]

The U.S. Government denied involvement, but several investigations by Government agencies, as well as the press, commenced shortly thereafter. A CIA Station Chief in Central America, Tomas Castillo, sent a secret message to Robert Dutton, Secord's top aide in the Contra resupply operation, alerting him that the "situation requires we do necessary damage control."[3]

North Tries to Slow the FBI Investigation of SAT

Within days of the Hasenfus crash, FBI agents began interviewing SAT employees.[4] They sought to determine whether arms or combatants had been sent from the United States to support insurrection in Nicaragua, in violation of the Neutrality Act. Before the FBI agents could obtain any subpoenas, North called FBI Executive Assistant Director Oliver Revell on October 8 and told him he was concerned about the SAT investigation.[5] North assured Revell that SAT was not involved in illegal activities. North also indicated to Revell that SAT was involved in the arms sales to Iran. North had earlier told Revell about the Iran arms sales in late July 1986 during an Operations Sub Group meeting.[6] North told Revell that he did not know anything about the C-123 that was shot down.[7] North said that SAT was still flying arms shipments to Iran, and those missions would inevitably be disclosed if SAT was investigated.[8]

Revell contacted the Miami FBI office and asked for a written briefing on the investigation,[9] but he did not slow it down. Instead, he obtained authority from Deputy Assistant Attorney General Mark Richard to begin an official investigation on October 10, 1986.[10]

North Tries to Slow the Customs Investigation of SAT

The U.S. Customs Service also began an investigation after the crash. Upon tracing the purchase of the C-123 to SAT, Customs agents served a broad administrative subpoena on SAT.[11] A full-scale investigation would have revealed payments for both the Iran flights and for arms shipments to the Contras from the Enterprise's Lake Resources and Hyde Park Square accounts in Switzerland.[12] In fact, during the May 1986 Tehran mission, the SAT crew stopped in a European country on their return flight, loaded arms, and flew them to a base in Central America for the Contra resupply operation. One wire transfer from Hyde Park Square paid for both missions.[13]

On October 9, 1986, North called U.S. Customs Assistant Commissioner for Enforcement William Rosenblatt and said he was concerned about the SAT subpoena. North told Rosenblatt that the SAT people were "good guys" who had done nothing illegal. North denied that the SAT airplane contained arms when it left the United States.[14] Relying on North's assurances, Rosenblatt took steps to narrow the focus of the investigation to the airplane itself, and whether arms or ammunition were being exported without a license.[15]

On October 17, David Major, an FBI agent on assignment to the NSC, sent a PROF note to Alton Keel stating that the FBI investigation should be ending. The note continued:

> However, Customs is going after this case like a dog in heat. They have a task force investigating violations of (1) foreign asset laws (2) Nicaragua trade embargo and (3) illegal export laws. Treasury is running . . . hard on this investigation and will most likely trip over legal but very sensitive cover CIA operations not related to Nicaragua.[16]

In the same time period, North called Rosenblatt and again assured him that he had "double-checked" and there were no arms aboard the C-123 airplane.[17] Rosenblatt, who had by then received similar information from the Customs agent in charge of the investigation, told North once again that Customs was concentrating the investigation on the airplane itself to see whether special licensing requirements had been violated.[18]

After Customs served a new subpoena on SAT on October 29, Craig Coy, one of North's assistants, telephoned to tell Rosenblatt that he had spoken to North and that they were concerned about the Customs agents being "all over" SAT.[19] Rosenblatt then called North, who asked why the Customs agents were at SAT, telling Rosenblatt, "We are right in the middle of a lot of sensitive business here, I am trying to get some packages [hostages] out of here. . . ."[20] Rosenblatt told North that the investigation of the C-123 was going forward and other agencies were investigating as well. North told Rosenblatt to call Coy and tell him to take care of the other agencies, which Rosenblatt did.[21] Rosenblatt took no steps, however, to terminate the Customs investigation, and he had no further contact with North regarding SAT.[22]

Poindexter Tries to Slow the Investigations

Shortly thereafter, Poindexter called the Attorney General and asked him to delay the investigations of SAT by the FBI and Customs.[23] According to the Attorney General, Poindexter told him that the SAT employees were needed for the Iran initiative.[24] Attorney General Meese also mentioned the Customs investigation briefly to Treasury Secretary James Baker, but did not recall discussing it any further with him thereafter.[25] Meese told Associate Attorney General Steven Trott to ask FBI Director Webster to delay the SAT investigation for 10 days.[26] On October 30, Trott called Webster and asked him to delay all nonurgent investigative activity regarding SAT,[27] telling him that, without the delay, the investigation could compromise "sensitive hostage negotiations."[28] FBI headquarters checked with their Miami office and was told the investigation could be delayed for 10 days. After more than 10 days had passed, Trott raised the matter with the Attorney General at the FBI's request, and several days later Attorney General Meese told him the FBI could proceed.[29]

House Committee Seeks Independent Counsel to Investigate Hasenfus Crash

On October 17, 13 days after the Hasenfus crash, a majority of the Democratic members of the House Judiciary Committee asked the Attorney General to appoint an Independent Counsel to investigate North, Casey, Poindexter, and others regarding their alleged involvement with the Contras.[30] The request cited the Hasenfus crash and prior allegations by Senator John F. Kerry and others regarding activities by Administration officials in support of the Contras. The Attorney General referred the letter to the Criminal Division of the Justice Department, where it was in turn referred to the Public Integrity Section.

Once a request for an Independent Counsel is received from Congress, the Justice Department has 30 days to report back. The Justice Department's Public Integrity Section began by asking the other sections of the Justice Department, and the FBI and Customs, to identify any cases that might involve Administration officials in the Contra operation.[31] The Public Integrity Section learned that the Fraud Section was investigating allegations of improper use of humanitarian aid through the Nicaraguan Humanitarian Aid Office program to provide weapons to the Contras.[32] The Public Integrity Section also learned that the FBI and U.S. Attorney's office in Miami were investigating claims that North, Robert Owen, and others were providing military aid to the Contras.[33]

Customs and FBI officials promised to provide synopses of pending cases. The FBI provided no information prior to the appointment of an Independent Counsel in December 1986.[34] Customs wrote a letter on November 14, 1986, which did not mention North's requests to narrow subpoenas.[35]

Furmark Visits the CIA: Talk of "Diversion"

While the investigations precipitated by the Hasenfus downing threatened to expose the covert Contra support operation, another event in October 1986 threatened to expose the diversion: Roy Furmark, a business associate of Adnan Khashoggi warned the CIA that, unless certain investors in the Iran arms sales were repaid, they would publicly disclose what they knew of the arms sales and the use of arms sales proceeds for the Contras.

Furmark—who was also a former law client of Director Casey—met with Casey, at Khashoggi's request, on October 7 in Casey's office. Furmark said that Khashoggi and two Canadian investors had supplied financing for the Iran arms sales.[36] They claimed to have lost their $10 million advance when the United States overcharged and then abandoned the First Iranian Channel in favor of dealing with the so-called Second Channel.[37] Khashoggi wanted Furmark to see if Casey could get the U.S. Government to make good on this loan.

At their October 7 meeting, Furmark informed Casey of Khashoggi's role, discussed the financial problems that had arisen, and said that Khashoggi was under pressure from the two Canadians who had participated in the $10 million financing. Furmark warned Casey that Manucher Ghorbanifar—the initial go-between for the United States with the Iranians—was also upset and was threatening to tell members of the Senate Select Committee on Intelligence (SSCI) about the arms sales.[38] When Casey suggested that the transaction sounded like an Israeli arrangement, Furmark told Casey that North was directing the deal.[39]

Although Furmark had known for some time of Ghorbanifar's speculation that Iran arms sales proceeds had been diverted to the Contras, it is not clear that he shared this speculation with Casey during their October 7 meeting. Before the SSCI, Furmark initially testified that he "probably alluded" to the possibility that some of the money might have gone to Nicaragua. He stated later, however, that he did not believe that he had referred to the names of any countries.[40] North testified that Furmark had told Casey in early October about the speculation surrounding the diversion to the Contras.[41]

In the meantime, Charles Allen of the CIA had heard from North in early September that the First Channel was being shut down and that the Second Channel had "flourished into full bloom."[42] Allen was disturbed by this news, "because I couldn't figure out why we would so abruptly shut down the first channel unless we had a very good plan for shutting it down in a way that Ghorbanifar and these creditors of Ghorbanifar would feel assuaged."[43] Allen shared his concerns with Robert Gates of the CIA on October 1. Gates, too, was disturbed and asked Allen to brief the CIA Director.[44]

Allen and Gates arrived in Casey's office together on October 7, after Furmark had departed. Allen told Casey of his misgivings. Casey rejoined that he had just met with Furmark, who had described Khashoggi's financial problems with other investors whom Allen understood to be Canadian. Casey did not mention that funds might have been diverted to the Contras.[45]

In his appearance before the Tower Board, Gates recalled that "Allen shared his speculation with the Director about the possibility that some of the money was being diverted to the Contras. The Director told him [Allen] to put all of that down on paper." *

A few days later, on October 9, North, back from the Frankfurt negotiations with the Iranians, briefed Casey and Gates on the status of the Iran initiative. It does not appear that, in the presence of Gates, Casey shared with North Allen's suspicions about the diversion to the Contras.**

Allen's October 14 memorandum provided a lengthy account of the Iran initiative, including a brief summary of the recently concluded meetings in Frankfurt, the status of Ghorbanifar's financial situation, and a summary of information that Ghorbanifar might expose. The memorandum did not expressly allege that the profit from the arms deals might have gone to the Contras; rather, it recorded Ghorbanifar as stating that, "some of . . . [the] profit was redistributed to other projects of the US and of Israel."*

Gates and Casey met with Poindexter the following day, October 15.[46] Poindexter read Allen's memorandum.[47] Although Poindexter acknowledged in his testiony that the memorandum contained the news that Ghorbanifar or his financiers were saying that their money went to Central America, and although Poindexter and Casey met alone, Poindexter testified that he and Casey did not discuss the diversion. Casey simply recommended, according to Poindexter, that Poindexter seek the advice of White House Counsel with respect to disclosure of the initiative. Poindexter, however, did nothing because he did not trust the White House Counsel.[48]

After meeting with Poindexter, Gates and Casey directed Allen to meet with Furmark the next day, October 16.[49] Allen met Furmark, and sent a memorandum of the meeting to Casey. Allen's memorandum recited Furmark's account of the origins of the Iran arms transactions and Ghorbanifar's current financial condition. Furmark recommended that the United States consider yet another arms transaction to maintain credibility with the Iranians and to provide Ghorbanifar with enough capital to make a partial repayment to Khashoggi's creditors. As with Allen's October 14 memorandum, this memorandum contained no specific reference to a diversion of funds to the Contras. According to Allen, he wished to protect himself from any indiscriminate use of the memorandum.[50]

In his meeting with Allen on October 16, Furmark gave Allen a rundown of the transactions to date. He claimed the shipment of HAWK spare parts in May 1986 resulted in the release of U.S. hostage Father Lawrence Jenco.[51] Furmark warned Allen that the Canadians would go public with the "back-channel" arms sales unless the United States shipped additional weapons through Ghorbanifar so that Khashoggi could be repaid.[52]

The meeting with Allen was cut short so that Furmark and Allen could join Casey and his wife on an airplane to New York. En route, Furmark and Casey again discussed the arms sales in general.[53] Casey still did not acknowledge that the United States had any responsibility for the arms sales, but indicated he was working on the problem.[54] Furmark suggested, as he had to Allen, that Casey promote another arms sale to help Ghorbanifar financially. Casey was noncommittal, but promised to get back to Furmark.[55]

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* Gates, Tower Test., at 19. A week passed before Allen submitted the requested memorandum to Casey.

** Gates, Tower Test., at 22-23. Gates did take advantage of the opportunity presented by the meeting with North to ask whether the CIA was involved in private fundraising for the Contras. North responded that the Agency was "clean." In exonerating the CIA, North offered a "cryptic comment about Swiss accounts and the Contras." No one pursued the comment and the meeting concluded.

*N 10. Gates found the terseness of the Allen memorandum noteworthy. In testimony before the SSCI, Gates stated: "And in fact, in the [Allen] memorandum of six or seven or eight pages—I don't recall how long it is—single-spaced there is only one sentence that refers to possible diversion of funds . . . . There is no mention in the memorandum specifically of a diversion to the Contras. That reference to me was oral on the 1st [of October] and repeated again to the Director on the 7th." Gates apparently believed this news was relegated to such obscurity because it was based on "shaky stuff." Gates Test., SSCI, at 22, 34.

North's notebooks show that Furmark's recommendation to generate funds to pay Khashoggi's creditors received serious consideration. North wrote of a conversation with Israeli official Amiram Nir on October 22: "Best way to recoup funds to pay off Furmark, et al is to overcharge on subsequent deliveries."[56]

On October 22, Charles Allen, George Cave, and Roy Furmark met in New York. In the course of that meeting, Furmark raised, for the first time with Allen, the possibility that funds used to finance the arms sales might have been diverted to the Contras.[57]

Allen and Cave reported their discussion with Furmark to Casey, who appeared "deeply disturbed" by what he was told. Allen and Cave then jointly prepared a memorandum for Casey to send to Poindexter. Allen's testimony dated the Casey memorandum at October 23.[58]

This Allen-Cave memorandum set forth detailed accounts (attributed to Furmark) of the early stages of the Iran initiative and the financing of the HAWK spare parts transaction. It also referred to Ghorbanifar's accusation, which Furmark had repeated, that some of the "bulk of the original $15 million price tag was earmarked for Central America."[59] The memorandum "laid out starkly . . . that Ghorbanifar had made allegations of diversion of funds to the Contras,"[60] but it did not offer an assessment by Casey, Cave, Allen, or any other CIA official, of the accuracy of Ghorbanifar's charges. Furthermore, as with the previous memorandums, the memorandum made no reference to Allen's own suspicions that the Americans had inflated the price and directed some of the money to the Contras.

Although Casey spoke to Poindexter by secure telephone about the Allen-Cave briefing on the Furmark meeting, the memorandum never reached Poindexter. According to Allen, the memorandum "fell into the wrong outbox;" it was not discovered until November 25; and Casey was "deeply upset" when he discovered that he had not signed or sent it.[61]

Allen and Furmark met once more on November 6. By this time the feared publicity of the Iran initiative had occurred. Allen prepared a memorandum for Casey the following day, which reported that the Canadian investors—having been deprived of the threat of exposing the initiative—were now threatening a lawsuit over their failure to be paid. The memorandum also showed that Furmark again alerted Allen to the remaining trump card in the investors' deck: linking the overcharges on the HAWK spare parts to the diversion.[62] Furmark also told Allen of his discovery that Secord was involved in both the arms sales and the Contra resupply operation.[63]

Allen reported to Casey that Furmark was most interested in prompting another arms deal so that Ghorbanifar could recoup his money, and that unhappy investors could make some "nasty allegations against the US Government and key officials" if the matter went unresolved. On the latter point, however, Allen added reassuringly that "much of what they know is speculation and cannot be proven."[64]

At Furmark's request, Casey met with him again on November 24 at CIA headquarters. Furmark and Casey reviewed the finances of the Iran arms transactions beginning in February 1986. This review established that the transactions had resulted in excess funds; Casey told Furmark that he did not know where that money had gone.[65]

In Furmark's presence, Casey unsuccessfully tried to reach the President's Chief of Staff, Donald Regan. He then called North and said "there's a guy here says you owe him $10 million . . . ." North reportedly responded: "[T]ell the man that the Iranians or the Israelis owe them the money."[66]*

Once Casey learned that Furmark and Ghorbanifar surmised that profits from the Iran arms sales had gone to the Contras, he advised North. North testified that this occurred in early October after the Hasenfus crash.[67] According to North, the meeting with Furmark triggered Casey to instruct North "that this whole thing was coming unravelled and that things ought to be 'cleaned up' . . . ." In response, North testified, he "started cleaning things up;" he "started shredding documents in earnest after [this] discussion with Director Casey in early October . . . ."**

The Travelers Check Ledger

As set out in Chapter 2, North received from Contra leader Adolpho Calero a large number of travelers checks for distribution to Contra leaders and for a variety of other programs. North asserted that he maintained "meticulous records" of the receipt and disbursement of these checks in a ledger provided by Casey.[68] Fawn Hall and Robert Owen testified to seeing North make entries in such a ledger.[69]

North destroyed this ledger, according to his testimony, at the direction of Casey to protect sensitive names and information. North told the Committees that Casey had instructed him sometime between October 13 and November 4 to " 'get rid of that book because the book has in it the names of everybody, the addresses of everybody. Just get rid of it and clean things up.' "[70]

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* After the Attorney General announced the discovery of the diversion on November 25, 1986, Furmark called Casey after being subpoenaed by Congress. Casey told him to "just follow us." Furmark Dep., 7/22/87, at 170.

** North Test., *Hearings*, 100–7, Part I, 7/7/87, at 19. Notably, at a meeting with the Second Channel in Europe on October 29-30, attended by North, Cave, Secord, and Secord associate Albert Hakim, North stated that he did not care if Ghorbanifar was paid, but that "what I'm more interested in is that the people to whom he owes money get paid." Cave stated that Ghorbanifar owed those people "10 Million." C 298.

North's explanation of why he destroyed the ledger is inconsistent with other of his actions. For example, North preserved his notebooks, which also recorded the names of those helping the Contras and included numerous references to payments made to them, as well as other highly sensitive and classified matters. When he was dismissed from the NSC staff, North took these notebooks with him and kept them in a nonsecure environment, at the same time that he was destroying the ledger which had been maintained in an NSC vaulted office.

As a result of this destruction, no written record exists to verify North's testimony that checks he cashed for his personal use actually were reimbursements for his out-of-pocket expenses on behalf of the Contras.[71]

The Fall Guy Plan

Throughout the events of the Iran-Contra Affair, deception was viewed as a necessary component. At the same time, according to North's testimony, Casey recognized the need for an ultimate coverup in the event of public disclosure.*

As far back as the early spring of 1984, North said he and Director Casey had discussed a "fall guy plan."[72] Their discussion took place in the context of Congress' impending cutoff of U.S. aid for the Contras (the Boland Amendment). According to North, when "we eventually decided to pursue availing ourselves of offers from foreign governments [to fund the Contras], it was seen that there would need to be someone who could . . . take the fall" in the event of public disclosure. The idea was to provide North's superiors with "plausible deniability"—although in this instance, that term meant avoiding accountability to the U.S. Government rather than avoiding disclosure to U.S. adversaries.[73]

As North's operational role expanded to the Iran arms sales and the diversion of proceeds derived therefrom, he testified, he volunteered to be the "fall guy" for both the Contra support and the arms sales operations. In his words, "I'm not sure Director Casey ever said, 'It has to be you, Ollie.' It was probably Ollie saying, 'Well, when that [disclosure] happens, it will be me.' "[74]

North made no secret among his colleagues that he was to be a "scapegoat" or "fall guy" if the Iran or Contra support activities became public. He made this comment to at least Poindexter, Robert Earl (one of North's aides), and Owen.[75]

Disclosure of the arms sales in early November 1986 triggered discussions about implementing the fall guy plan. According to North, shortly after the initial November disclosures, Casey told him that he [North] might not be "big enough" to be the "fall guy." Casey indicated that "it's probably going to go higher," and he suggested that "Poindexter might have to be a fall guy."[76] Although North did not recall a conversation with Poindexter about this specific aspect of the plan for "plausible deniability," he did recall that he and Poindexter discussed in early November the likelihood that both of them would have to bear the blame.[77]

North testified that he previously had discussed both the fact and necessity of the "fall guy plan" with Poindexter and McFarlane (as well as with Casey), and that he did not recall any discussion with anybody about the legal propriety of this plan.[78] Poindexter testified, however, that he "was not a party to any plan to make Colonel North or to make me, for that matter, a scapegoat."[79] He nevertheless admitted that "[periodically] Ollie would indicate that he was 'willing to take the rap.' "[80] McFarlane flatly denied that any "fall guy plan" ever existed.[81]

North testified that, but for the criminal investigation of the Iran-Contra Affair, he was prepared to go through with the "plan, resign in disgrace, and take the heat for the President."[82] (There is no evidence that the President was aware of or condoned the "fall guy" plan.) Nevertheless, when an Independent Counsel was appointed and North was the only person specifically named in the order of investigation, North, who by then had retained counsel, changed his mind and decided to protect himself.* North testified that he did not tell Casey or Poindexter of this change in attitude.[83]

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*As noted earlier, North's testimony attributing knowledge and statements to Casey after Casey's death should be viewed with caution, particularly insofar as such testimony, albeit under oath, tends to exculpate North.

* North testified that, "I never in my wildest dreams or nightmares envisioned that we would end up with criminal charges." North Test., *Hearings*, 100–7, Part I, 7/8/87, at 145; 7/13/87, at 41.

Chapter 18

1. See Chapter 6.
2. *Id.* See also, Bastion Dep., 2/13/87, at 7.
3. KL-43 message, 10/05/86, N 438.
4. Revell Dep., 6/11/87, at 60-61.
5. *Id.*, at 61.
6. *Id.*, at 49.
7. *Id.*, at 62.
8. *Id.*
9. *Id.*, at 63.
10. *Id.*
11. *Id.*, at 68-69.
12. SAT Doc. Nos. 463, 1687, 1688, 1690, 1691, 1790.
13. *Id.*
14. Rosenblatt Dep., 9/25/87, at 85.
15. *Id.*, at 86-88.
16. PROF note, 10/17/86, N 18297-98.
17. Rosenblatt Dep., 9/25/87, at 84-85.
18. *Id.*, at 36.
19. *Id.*, at 91.
20. *Id.*, at 93.
21. *Id.*
22. *Id.*, at 99.
23. Meese Dep., 7/8/87, at 41-44.
24. *Id.*, at 44.
25. *Id.*, at 41-43.
26. Trott Int., 5/11/87, at 1.
27. Memo to Clarke from Webster, 10/31/86, Ex. EM-14.
28. *Id.*
29. Memo to Weld from Martin, on Investigation of Southern Air Transport, 11/12/86, J 7738.
30. Ex. Em-13.
31. Ralph Martin Int., 5/14/87.
32. *Id.*; Memo from Martin to Weld, Ex. EM-63.
33. See also Chapter 5.
34. Jarrett Int., 4/23/87.
35. Letter from Rafael Lopez to Ralph Martin, 11/14/86, J 6956.
36. Furmark Dep., 7/22/87, at 122. Khashoggi and one of the Canadians have denied that the Canadians ever invested in the arms sales. Khashoggi Int., 5/15/87; Fraser Dep., 4/29/87, at 21, 25-26.
37. See Chapter 22.
38. Furmark Dep., 7/22/87, at 122-126.
39. *Id.*, at 123-24.
40. Furmark, SSCI Test., at 70, 73-74.
41. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 19.
42. Allen Dep., 4/24/87, at 443-44, 452.
43. *Id.*, at 452-453.
44. Tower, at B-168.
45. *Id.*
46. Gates Dep., 7/31/87, at 19.
47. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 55.
48. *Id.*; Poindexter Dep., 5/2/87, at 196-99.
49. Allen, Tower Test., at 32.
50. Allen Int., 9/23/87, at 28-29.
51. Memo from Allen to DCI, 10/17/86, Ex. EM-57, at 9.
52. *Id.*, at 10.
53. Furmark Dep., 7/22/87, at 135.
54. *Id.*
55. *Id.*, at 133-36.
56. North Notes, Q 2559.
57. Furmark Dep., 7/22/87, at 140-41.
58. Allen, Tower Test., at 33-34.
59. I 196.
60. Tower, at B-169.
61. *Id.*, at B-169-70.
62. Memo from Allen to DCI, 11/7/86, C 9371.
63. Ex. EM-57, at 6.
64. C 9372.
65. Furmark Dep., 7/22/87, at 167-69.
66. *Id.*, at 168.
67. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 19.
68. *Id.*, at 132-35.
69. Hall Test., *Hearings*, 100-5, 6/8/87, at 482–83; Owen Test., *Hearings*, 100-2, 5/12/87, at 332-33.
70. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 132-35.
71. *Id.*, at 133-34.
72. *Id.*, Part II, 7/13/87, at 38-39.
73. *Id.*, at 39.
74. *Id.*, at 40.
75. E.g., North Test., *Hearings*, 100-7, Part I, 7/8/87, at 145; *Id.*, 7/9/87, at 234; Owen Test., *Hearings*, 100-2, 5/19/87, at 366; Earl Dep., 5/22/87, at 149; Poindexter Dep., 6/17/87, at 243.
76. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 40.
77. *Id.*
78. *Id.*, at 40-41.
79. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 120–21.
80. Poindexter Dep., 5/2/87, at 243.
81. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 205.
82. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 41.

Chapter 19
November 1986: Concealment

The Administration's Initial Response to the Arms Sales Disclosures

The reports of U.S. arms sales to Iran in early November 1986 generated conflict within the Government. Some officials, including Members of Congress and the Secretary of State, demanded prompt and full disclosure. Several individuals on the inside of the Administration, however, insisted on maintaining tight control of the information. The President, denying any arms-for-hostages trade, wanted to say no more than that. Members of the National Security Council (NSC) staff and the Director of Central Intelligence knew that the report from Beirut was only the tip of the iceberg. Accordingly, their first move was to exploit the President's desire to protect the hostages through silence as a way of concealing the truth.

The conflict manifested itself almost at once in an exchange between Secretary of State George Shultz and National Security Adviser John Poindexter shortly after the news broke.

The Shultz/Poindexter Cables

The Secretary of State was largely without knowledge concerning the Iran initiative. Among other things, Secretary Shultz testified that he did not know prior to November 1986 that the United States had made direct sales of arms to Iran during 1986 or that the President had signed a Finding authorizing such sales. He did know, after the fact, that McFarlane had travelled to Tehran in May, but not that the McFarlane mission had carried weapons with it, or that additional weapons had been delivered thereafter. Moreover, so far as the Secretary of State was advised, the failed McFarlane mission had signaled an end to the Administration's effort to find an opening to Iran.[1]

Thus, the report in Al-Shiraa was news to the Secretary of State. He was then in Europe and found himself peppered with questions from the press about the revelations in Beirut. The Secretary reported these questions in a cable to Poindexter, informing Poindexter that "[t]he big story the press is after is to establish that the U.S. violated its own policy by cutting a big secret arms deal with Iran in order to get our hostages released." Secretary Shultz further informed Poindexter that, "[i]n accordance with the agreed guidance," he had refused to answer any related questions, stating that all such inquiries should be directed to the White House.[2]

The Secretary went on to say that he had been "racking my brains all day to figure out a way to help turn this situation in the best possible direction." To this end, Secretary Shultz recommended that "the best way to proceed is to give the key facts to the public." In addition, apparently based on the arms shipment reported by Al-Shiraa, the Secretary suggested that "[w]e could make clear that this was a special, one-time operation based on humanitarian grounds and decided by the President within his Constitutional responsibility to act for the service of the national interest—and that our policies toward terrorism and toward the Iran/Iraq war stand." [3]

Poindexter, who knew the true facts, rejected Secretary Shultz's proposal. In a return cable Poindexter stated, "I do not believe that now is the time to give the facts to the public," although he asserted that "when we do lay out the facts that it will be well received since it is a good story." Poindexter advised Secretary Shultz that he had spoken that day with the Vice President, the Secretary of Defense, and the Director Casey, and that they all agreed that no statement should be made.[4]

Poindexter further advised Secretary Shultz that he had asked the NSC staff to prepare messages to U.S. allies explaining that U.S. policy toward the Iran-Iraq war had not changed, and that the Administration would not comment on the reported arms sales because of potential danger to the hostages.[5]

The Administration did, however, issue a statement on November 4, asserting that "as long as Iran advocates the use of terrorism, the United States arms embargo will continue." This portion of the White House statement had been drafted by Poindexter, and implied that the United States had not sold arms to Iran.[6] When the Secretary of State subsequently reviewed this statement, he found it "the kind of tricky and misleading statement that looks great on the surface, but then you start looking at it more carefully and you see it is going in a different direction entirely."[7]

The Public Denials Continue

The issue of public comment on the arms sales was discussed during Poindexter's morning meetings with the President on November 6 and 7. The President agreed that "no comment" was the best policy given his hope, bolstered by Poindexter, that additional hostages would yet be freed. According to notes of the briefings taken by Rodney McDaniel of the NSC staff, the President said that "[n]o way can comment without further damage to chances of getting hostages out."[8]

Accordingly, on November 6, at an unrelated bill-signing ceremony, the President stated in response to a reporter's question that, "the speculation, the commenting and all, on [the Al-Shiraa] story" had "no foundation," although his comments fell short of an outright repudiation of that story. The President further stated that the speculation about arms transactions between the United States and Iran "is making it more difficult for us to get our other hostages free."[9] On November 7, McFarlane sent a PROF note to Poindexter complaining that he had heard that Chief of Staff Regan had spoken with the press and "laid the entire problem at [McFarlane's] feet."* In reply, Poindexter told McFarlane that he had spoken to Regan that morning, and that Regan "agreed that he would keep his mouth shut." Poindexter concluded that "[w]e have a damned good story to tell when we are ready. Right now would be an absolutely stupid time for the Administration to say anything."[10]

The November 10 Meeting at the White House

Notwithstanding Poindexter's analysis, it soon became clear that the Administration's preference for total silence could not be sustained. Pressure was mounting in the public, the press, and in the Government itself for an explanation of what had happened. The President would have to make a statement.

On November 10, the President convened a meeting at the White House to establish guidelines for that statement. The Vice President, Secretary Shultz, Secretary Weinberger, Attorney General Meese, Casey, Regan, Poindexter and Alton Keel, then Deputy National Security Adviser attended.[11] The President said there was a need for a public statement, but he instructed his advisers to "stay away from detail."[12]

Keel and Regan made notes during the November 10 meeting; Secretary Weinberger wrote a subsequent memorandum; and Secretary Shultz dictated his recollections of the meeting to his Executive Assistant, Charles Hill. These records contain no material differences. They all show that the meeting was marked by a number of misleading statements and significant omissions by Poindexter as he purported to lay out the facts of the Iran initiative.

For example:

- Poindexter discussed only the January 17, 1986, Finding, omitting any mention of the earlier Finding signed by the President on December 5, 1985, or of the January 6, 1986, superseded Finding.

- Poindexter claimed, falsely, that the Iran initiative had begun when the United States stumbled upon an Israeli arms warehouse in Europe while attempting to learn whether the Israelis were shipping arms to Iran.*

- Poindexter asserted that the first 500 TOW missiles were shipped from Israel to Iran in August and September 1985, without U.S. permission, even though the Administration had approved this shipment.**

- Poindexter stated that the total number of TOW missiles sold to Iran during the initiative was 1,000, when the actual number was 2,004.

- Poindexter indicated that the last 500 TOWs sent in October 1986, had been shipped by Israel rather than the United States. But in fact, Israel had acted at the NSC staff's request because the U.S. shipment was delayed, and the United States had replenished the Israeli TOWs within days after the shipment.[13]

In other words, as late as November 10, and in the presence of the President and senior Cabinet officers, Poindexter either was confused or purposely dissembled. Despite the fact that the President had opened the meeting by declaring the need for a public state-

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*N 7501, PROF from McFarlane to Poindexter, 11/7/86, 20:30:32. After voicing this complaint, McFarlane's note went on to set forth the so-called "truth" about the Iran initiative. But McFarlane made no mention of the November 1985 HAWK shipment. See Section, "The NSC Staff's Chronologies," *infra*.

*Oakley Aff., 7/2/87; Ex. GPS-55. This same story had been told by North to Ambassador Oakley in November 1985 when North enlisted Oakley's aid in causing a U.S. Embassy in Europe to intercede with its host government to provide flight clearance for the HAWK shipment. It was repeated by North in a memorandum dated December 5, 1985, prior to the December 7 meeting of the President's top advisers. However, according to the evidence, the Iran initiative actually began and went forward through the efforts of McFarlane conducted to a considerable extent without informing the Secretary of State. When the Secretary of State heard the warehouse story at the November 10, 1986 meeting, he considered it "cock and bull." Shultz Test., *Hearings*, 100-9, 7/23/87, at 30.

**McFarlane testified that the President approved the August-September 1985 shipments. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 49. Based on all of the evidence, the Committees believe that the President did so.

ment, Poindexter continued to argue that "no statement [is] needed, news has peaked, no hearings until Jan[uary], so [we] should not say anything." [14]

As the group continued to discuss the proposed public response, Secretary Weinberger noted his surprise that more than 500 TOW missiles had been shipped. He said he had understood that no more than 500 TOWs would be sent unless all the hostages were released. Poindexter responded that it "just always came back to Pres[ident], he agreed to go forward." [15] In this connection, Secretary Shultz expressed his amazement that he was not informed of the January Finding until November.[16] When Poindexter told the group that the weapons shipped were in "minuscule" amounts, Secretary Shultz responded that "[i]t is ransom . . . [we] must not gild lily," and that he was "afraid of technically correct statements that are not fully descriptive." [17]

The meeting concluded as it began, when, according to Regan's notes, the President had outlined the type of statement he wanted:

> We have not dealt directly w[ith] terrorists, no bargaining, no ransom. Some things we can't discuss because of long-term consideration of people w[ith] whom we have been talking about the future of Iran.[18]

The President, Attorney General Meese and Casey all agreed that the statement would emphasize the strategic component of the arms sales and downplay efforts to release the hostages.[19]

Later that afternoon, Poindexter and Meese reviewed a draft White House statement prepared by Casey.* This draft asserted that U.S. policy "has been and continues to be to restrain shipments of arms to either [Iran or Iraq] that could alter the balance or prolong the war . . . [and] not to reward hostage takers by meeting their demands." [20] Regan's notes of the review session indicate that certain information in the proposed statement was eliminated by unnamed NSC staffers due to ongoing conversations with the Iranians in Geneva, leading to the "possible release of 2 [hostages], maybe all 5." The notes further reflect that Poindexter obtained "sign offs" on the statement from Secretary Weinberger, Attorney General Meese, Casey, and the President. He was unable to contact Secretary Shultz, who was en route to South America.[21]

Secretary Shultz received the draft statement during his trip and advised Poindexter that he objected to the portion that asserted there had been "unanimous support for the President's decisions." [22] By cable, Secretary Shultz told Poindexter that this characterization was simply inaccurate; he had always supported the President, but he had opposed the policy. At Secretary Shultz's insistence, Poindexter changed the statement to read that there had been "unanimous support for the President" among his senior advisers.[23] Secretary Shultz was not "altogether comfortable" with this change, although he agreed to the statement as revised.[24]

Phase 2 of the Administration Response: Limited Disclosure

Preparing for the President's Address to the Nation

After November 10, the White House began preparing a formal statement for the President to deliver personally to the Nation. This statement was discussed at the daily national security briefing between Poindexter and the President, both of whom expressed continued hope that more hostages would be released that coming weekend. They agreed that the President's upcoming statement would focus on the legality of the arms initiative and emphasize that the arms sales did not constitute ransom.[25]

On the same day, McFarlane sent a PROF message to Poindexter in which he stated that "the only way—the only way—the Administration can expect to come out of this with any element of credibility is for there to be some evidence that it was worth it to try to engage moderates in Iran." This required, according to McFarlane, a statement from Iran. He recommended that the United States concentrate all efforts on convincing the Iranians to change their rhetoric immediately. McFarlane told Poindexter that he had "drafted up some words and left them with Ollie to be sent to Iran." [26]

McFarlane also produced and sent to Poindexter a draft statement for the President, focusing on the effort to open a political dialogue with Iranian moderates.[27] Poindexter wrote back that he had reviewed the draft with North and that they had agreed there was a need to show the final product to George Cave of the CIA in order to "get an 'Iranian reaction' on it." [28]

On November 12, the day before the President was to address the Nation, he presided over a national security briefing of Congressional leaders on the arms sales. The executive branch attendees included the Vice President, Secretary Shultz, Secretary Weinberger, Attorney General Meese, Casey, Regan, Poindexter, and appropriate staff. Senate Leaders Robert Dole and Robert Byrd and House Majority Leader Jim Wright and Representative Dick Cheney represented Congress. The President opened the meeting by stating that no laws were broken, no ransom paid for hostages, and no officials or agencies within the U.S. Government bypassed.[29]

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* N 8995-96. Prior to this meeting, Poindexter and Casey exchanged drafts of a proposed Presidential statement. Casey described Poindexter's draft as doing "little more than say we reviewed the matter and discovered that we didn't break the law," stating that his own draft "says a little more."

Poindexter conducted the briefing itself. Once more, he omitted certain material facts and was affirmatively misleading on others. Poindexter continued to talk in terms of only one Finding, omitting any reference to the other two signed by the President. He continued to discuss the transfer of only 1,000 TOWs and 240 HAWKs parts, omitting any reference to the additional 1,004 TOWs or the November 1985 HAWK shipment. Moreover, Poindexter continued to intimate that the 1985 Israeli arms shipments to Iran had been without U.S. authorization or prior knowledge.[30]

At the morning security briefing the next day, November 13, there was discussion of the elements of the President's upcoming statement, including that the arms shipments had not altered the balance in the Iran-Iraq war; that the arms sold were defensive in nature; and that there would be no additional shipments. There was discussion, too, of whether the total arms shipped to Iran would have fit in one 747 or C-5 cargo plane. The President also stated, according to notes of the meeting, that the Administration "should have gone public sooner." [31]

Poindexter briefed reporters "on background" (not for attribution) the same day, November 13. Although Poindexter initially told the reporters that any shipments made prior to January 1986 were undertaken without any U.S. role "either condoning, winking, encouraging, or anything of that nature," he acknowledged later in the briefing that "there was one shipment that was made not by us, but by a third country prior to the signing of [the January 17 Finding]." Poindexter did not confirm that the shipment was made by Israel, but did state that the shipment was made in "our interests." When asked about the existence of relevant Presidential Findings, Poindexter did not mention the Finding signed by the President in December 1985, but instead told reporters that the President "signed a document that has authorized this project" in January 1986.[32]

The President Addresses the Nation

The President addressed the Nation on November 13. He disclosed that the diplomatic initiative with Iran had been underway for some 18 months. The purposes of this initiative, he said, were (1) to forge a new relationship with Iran, (2) to bring an honorable end to the Iran-Iraq war, (3) to eliminate state-sponsored terrorism, and (4) as part of the new relationship, to attain the safe return of the American hostages held in Lebanon.[33]

The President stated that he had authorized "the transfer of small amounts of defensive weapons and spare parts. . . . These modest deliveries, taken together, could easily fit into a single cargo plane." He elaborated that the weapons shipped "could not, taken together, affect the outcome of the 6-year war between Iran and Iraq nor could they affect in any way the military balance between the two countries." He asserted that since the initiative had commenced, there had been no evidence of Iranian complicity in acts of terrorism against the United States. The President also emphasized that the arms initiative was conducted in full compliance with the law, and that all appropriate Cabinet officers "were fully consulted." He attacked "the wildly speculative false stories about arms for hostages and alleged ransom payments." The President concluded by stating that "[w]e did not—repeat—did not trade weapons or anything else for hostages nor will we." [34]

The President thus committed himself categorically to the proposition that there had been no trade of arms for the hostages and no violations of law. Certain members of the NSC staff and of the CIA, in turn, committed themselves to creating a version of the facts for internal and public consumption that would sustain this proposition.

Events Between November 13 and the November 19 News Conference

The Secretary of State testified that, throughout the first weeks of November after the Beirut report, he believed that the President was being misled and misinformed by his staff, particularly Poindexter. Secretary Shultz said he repeatedly argued to the President and Poindexter that nobody looking at the record would credit the assertion that the initiative did not involve arms-for-hostages, and that it was critical there be no tinkering with the facts. It was, the Secretary said, a "battle royal" to get out the truth.[35]

Secretary Shultz also pressed for a definitive statement that the United States would not under any circumstances sell any more arms to Iran. He met with the President on November 14 to urge that he make precisely that statement, and he repeated this recommendation in a draft paper delivered to Regan on November 15.[36] But the statement was not made, nor was Secretary Shultz assured that the arms shipments would be halted. Consequently, when Secretary Shultz appeared on *Face The Nation* on November 16 and expressed the view that the United States should not sell additional weapons to Iran, he felt constrained to answer in response to a question that he, the Secretary of State, did not have authority to speak for the Administration on this point.[37]

The next day the White House stated definitively that there would be no further arms sales to Iran. The White House also reaffirmed that the Secretary of State spoke for the Administration on matters of foreign policy.[38]

Meanwhile, at the Attorney General's request, Charles J. Cooper, Assistant Attorney General for the Office of Legal Counsel, had been looking into the legal issues surrounding the Iranian arms sales.* On November 12, 1986, Cooper sent a legal memorandum to the Attorney General that concluded, among other things, that so long as there was a Finding pursuant to the Hughes-Ryan Amendment, the arms sales did not violate the law.[39] In a meeting with Poindexter and Thompson that same day, Cooper had been shown only the January 17 Finding and had been left with the impression that this Finding predated any arms shipments to Iran.[40]

On November 17, Cooper received a draft chronology of events in the Iran initiative prepared by the NSC staff. In reviewing this chronology, Cooper learned for the first time that arms had been transferred by Israel to Iran prior to the January 17, 1986, Finding.[41] Cooper informed the Attorney General, who said that he, too, had been unaware of any arms shipped to Iran prior to the January Finding.[42]

On the following day, November 18, North received calls from Alton Keel, Deputy National Security Adviser, Poindexter, and Richard Armitage, Assistant Secretary of Defense, all concerning the legal problems raised by the pre-Finding arms shipments to Iran.

In the morning on November 18, an executive branch general counsels' meeting was held in the office of White House Counsel Peter Wallison. This meeting was attended by NSC general counsel Thompson, Cooper, CIA general counsel David Doherty, and State Department Legal Adviser Abraham Sofaer. Sofaer and Wallison expressed concern at the meeting when Thompson refused to provide them with all of the facts surrounding the Iran arms sales. Sofaer pressed on this point, and Thompson replied that he was acting on instructions from Poindexter. He said that the Congressional leaders would be given all the information they needed to know, but that there was no need for the President's counsel or the State Department's Legal Adviser to know any more than Thompson was saying.[43]

Thompson asserted that, from a political standpoint, matters "seemed calm and the [Congressional Intelligence] Committees seem to be accepting the position of the White House." Sofaer did not accept this explanation and told Wallison that Thompson's refusal to give them a full briefing was "extremely serious." Wallison agreed and stayed behind at the end of the meeting to talk with Thompson. Later that day, Sofaer was notified that Poindexter would brief him and Undersecretary of State Michael Armacost at 6:00 p.m.[44]

At the 6:00 p.m. briefing, Poindexter laid out more of the facts to Sofaer and Armacost than Thompson had disclosed earlier in the day—but still not all of the facts. For example, Poindexter made no reference to the pre-January 17 Findings or to the November 1985 HAWK shipment. Sofaer left the meeting highly concerned that he still did not have the whole story.[45]

During the same day, November 18, Poindexter and Casey spoke by secure telephone. A transcript of their conversation indicates that they discussed meeting to prepare for their Congressional briefings and for Casey's scheduled November 21 testimony on Capitol Hill. Poindexter told Casey that the NSC staff had been "putting together all the chronologies and all the facts that we can lay our hands on . . . ."[46] With respect to the proposed preparation meeting, Casey asked whether Poindexter intended to have many people present, specifically mentioning "State" and "Defense." Poindexter responded, "I'd like to spend some time just the two of us. . . . Ed Meese indicated . . . he should want to be helpful and so he would like to be in at least one of the meetings."[47]

Meanwhile, at North's request, McFarlane reviewed the draft opening statement to be used by the President at the news conference scheduled for the next evening. According to McFarlane, the statement seemed "to be incomplete in a number of respects," and McFarlane sent suggested changes to Poindexter by PROFs computer. In the proposed changes, McFarlane denied United States approval of any pre-Finding shipments.[48]

Later the same day, November 19, McFarlane stopped at Poindexter's office to pick up a copy of the President's opening statement for the press conference. With at least NSC staffer Howard Teicher and North present (Keel and Poindexter may also have been there), McFarlane told North that a problem remains over "the channeling of money to the Contras." There is no evidence that anyone overheard McFarlane's statement to North.[49]

The President's November 19 News Conference

On November 19, the President vouched for facts that were wrong. In his nationally televised news conference, the President made the following assertions—all of which were incorrect:

- The President denied any involvement by a third country in the arms sales. When asked if he could explain the Israeli role, he replied, "No, because we, as I say, have had nothing to do with other countries or their shipment of arms or doing what they're doing."
- When asked whether he was saying that "the only shipments with which we were involved were the one or two that followed your January

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*Cooper Test., *Hearings*, 100-6, 6/25/87, at 227. Cooper had received this assignment from the Attorney General on November 7, and had been advised at the same time that his NSC point of contact would be Paul Thompson, the NSC's general counsel. Meese Dep., 7/8/87, at 53-54.

> 17 Finding and that . . . there were no other shipments which the United States condoned," the President responded, "That's right. I'm saying nothing, but the missiles we sold . . . ."
>
> - The President asserted that 1,000 TOW missiles were transferred (in fact, 2,004 were transferred), and that the 1,000 transferred TOWs "didn't add to any offensive power on the part of Iran."
>
> - The President stated that "everything that we sold [Iran] could be put in one cargo plane, and there would be plenty of room left over."

In addition, the President repeated his assertion that the United States had not traded arms for hostages, relying on the distinction that the Iranian Government itself did not hold the hostages.

Although the President denied any third-country involvement in the sales and said he could not explain the role of Israel, the Israeli role had been discussed prominently in the cover memorandum on the basis of which the President signed the January 17, 1986, Finding permitting the sales to go forward. Further, while the President also stated at his news conference that the United States had not been involved with or condoned any shipments prior to the January 1986 Finding, he told the Secretary of State that day that he had known of the November 1985 shipment of HAWK missiles to Iran by Israel.*

After the press conference, Charles Cooper telephoned Paul Thompson to initiate a correction of the President's obvious misstatement that no third country had been involved in the arms sales. Thompson assured Cooper that the NSC staff was already aware of this error and was planning to correct it.[50] A correction was issued from the White House 20 minutes later. Even this correction, however, left the record inaccurate. The correction conceded that a third country had been involved, but did not state that the United States had been involved in the sales by that country prior to the January 17, 1986, Finding.[51]

Commenting on the numerous errors at the press conference, Regan testified that Poindexter and his staff had spun so many stories in preparing the President that "this sort of confused the Presidential mind as to what he could say and couldn't say and what he should say and shouldn't say." [52]

The Secretary of State, who had watched the press conference, sought an immediate meeting with the President.[53]

The President and Secretary of State Meet on November 20

When he asked the President for a meeting, Secretary Shultz said that he could demonstrate that a number of facts had been misstated at the press conference.[54] In Secretary Shultz's view, the President's skilfulness as a communicator was being exploited by the NSC staff for its own purposes—to spread inaccurate information.[55]

The Secretary and the President met on November 20. Donald Regan was also there. It was, Secretary Shultz testified, a "long, tough discussion. Not the kind of discussion I ever thought I would have with the President of the United States." [56]

According to Secretary Shultz, he reviewed with the President the factual errors at the press conference.* The President "corroborated" the facts concerning his approval of various arms shipments—including the November 1985 HAWK shipment.[57] The President said, however, that "what he expected to have carried out was an effort to get an opening of a different kind to Iran and the arms and the hostages were ancillary to that, that was not his objective." [58] Shultz replied, "Well I recognize that, Mr. President, and that is a good objective, but that isn't the way it worked." [59]

The Secretary also asserted that the President was being given wrong information, including "information that suggested that Iran was no longer practicing terrorism." [60] He testified that his message overall to the President was: "You have got to look at these facts." [61]

The NSC Staff's Chronologies

Information was in fact being prepared by the NSC staff in the form of "chronologies," documents setting forth key events relating to the Iran initiative in chronological order. The NSC staff had begun preparing a chronology shortly after the disclosure of the Iran arms sales. The chronology started out as a one- or two-page outline. As time passed, however, the chronology was transformed into a 17-page single-spaced document containing background information and rationales for the various events and decisions.

Although a number of persons worked on the NSC staff chronologies, not all participated in falsifying the facts. That was the province of North, McFarlane, and Poindexter. North testified that the three had purposefully misrepresented significant events in the chronologies.[62]

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*Shultz Test., *Hearings*, 100-9, 7/23/87, at 44; Ex. GPS-C. According to contemporaneous notes made by Shultz's Executive Assistant, the President made this statement to Shultz on November 19, 1986 prior to the press conference.

*Shultz Test., *Hearings*, 100-9, 7/23/87, at 44. A paper prepared for Shultz's meeting with the President detailed the facts that were at odds with public statements from the White House. Ex. GPS-45; Sofaer Dep. at 58.

Poindexter acknowledged only that he had instructed North to omit any reference to the diversion.[63] Otherwise, both Poindexter and McFarlane claimed that they tried to paint a true picture in the chronologies, and that any failures were the result of faulty memory or, in the case of McFarlane, an effort to "gild" the facts.[64] The record refutes this claim—for the "errors" in the chronologies were not simply incorrect dates or imperfect renditions of meetings, but wholesale distortions of key events. Moreover, it was McFarlane himself who supplied narratives containing the most extreme misrepresentations, with Poindexter's approval and North's assistance.

The most glaring misrepresentations concerned the Israeli shipments made before the President's January 1986, Finding—the August-September 1985 shipments of 504 TOW missiles and the November 1985, shipment of 18 HAWK missiles from Israel to Iran. The initial versions of the chronology, prepared by North on November 7 included fairly accurate references to those shipments.[65] McFarlane then sent a PROF message to Poindexter on November 7 suggesting that "[i]t might be useful to review what the truth is." But McFarlane's version was not the "truth":

- He asserted that the August-September TOW shipments occurred when the Israelis "went ahead on their own" after McFarlane had disapproved; and
- He made no mention at all of the November 1985 HAWK shipment.[66]

McFarlane's "truth" set the stage for what was to come. Subsequent versions of the chronology, on November 12 and 13, picked up the theme of "no prior U.S. approval" of the 1985 Israeli shipments and claimed that the United States "acquiesced" in Israel's TOW shipment only after the release of hostage Benjamin Weir on September 14, 1985. No reference was made to any Presidential approval of those shipments or to any of the prior discussions between Israel and the United States from June through September; nor was there any reference to the November 1985 HAWK shipment.[67]

In the November 17, 5:00 p.m. edition of the chronology, the authors declared falsely that the United States was "not aware of the [August-September TOW] shipment at the time it was made." [68] However, this version of the chronology did contain an accurate reference to the November 1985 HAWK shipment, except that it was silent on the question of U.S. knowledge and approval.[69]

Then, three separate discussions occurred on November 18, between North and Keel, Poindexter, and Armitage, concerning the legality of the 1985 sales.[70] At 10:30 a.m., Keel and North reviewed the questions the President might be asked at the press conference on November 19. Two of the questions were, "Did Israeli shipments on our behalf violate the law?" and, "Did this violate the Arms Export Control Act?" At 5:30 p.m., North spoke to Poindexter, who referred to the pre-Finding period and told North that the "big issue then was legality." Then, at 6:00 p.m., Armitage called and told North that lawyers were asking him about the Israeli shipments in 1985 and wanted to know whether the United States knew about them.[71]

Following these conversations, another version of the chronology was drafted at 7:30 p.m. on November 18. It denied prior U.S. knowledge of the August-September 1985 TOW shipments and expressly stated that the November 1985 HAWK shipment was not an "authorized" exception to U.S. policy. It also contained an augmented misrepresentation of the TOW shipments. It stated that:

- When informed by Israeli official David Kimche of a possible transfer of TOWs, the United States, via McFarlane, refused to acquiesce in the transfer or to guarantee replacement of the TOWS.
- When the United States learned after the fact of the TOW transfers, a decision was made not "to expose this Israeli shipment," so that the United States could exploit the Israeli channel to Iran to further its own strategic initiative.[72]

Later in the evening on November 18, McFarlane sent Poindexter a lengthy PROF message suggesting deletions to the November 17 draft chronology and an insert relating principally to the 1985 shipments. He recommended that the chronology add that, after authorizing a "dialogue" with Iran in July 1985, the President rejected two separate Israeli proposals for arms transfers (one for a direct sale, the other for shipment by Israel), and, further, that "[w]e subsequently learned in late August the Israelis had transferred 508 TOW missiles to Iran." [73] North incorporated McFarlane's insert virtually verbatim in the next versions of the chronology, prepared on November 19 at 11:00 a.m. and November 20 at 1:00 p.m. and 8:00 p.m.[74]

The final two editions included two additional misstatements contributed by North: (1) that the Israelis "told us that they undertook the action, despite our objections, because they believed it to be in their strategic interests," and (2) that "[a]fter discussing this matter with the President, it was decided not to expose this Israeli delivery . . . ."*

As noted, the November 1985 HAWK shipment first appeared in a straightforward way in North's initial November 7 chronology.[75] It next appeared in the November 17, 3:00 p.m. version of the chronology, where it was presented as an Israeli shipment of

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*The "decision not to expose" fabrication first appeared, as discussed earlier, in the Nov. 18, 7:30 p.m. version of the chronology. It dropped out of the Nov. 19, 11:00 a.m. edition, and reappeared in the Nov. 20 versions with a reference to the President.

18 HAWKs which resulted from "urgent entreaties from the Iranians" and "raised U.S. concerns that we could well be creating misunderstandings in Tehran." [76] The 5:00 p.m. edition on November 17 kept the same description but added that "[t]hese missiles were subsequently returned to Israel in February 1986, with U.S. assistance."* On November 18, the chronology recited that the return of the HAWKs was "by mutual agreement of all three parties." [77]

However, following the three conversations North had on November 18 with Alton Keel, Poindexter, and Richard Armitage regarding the legality of the 1985 shipments, the story began to change. On November 18, the chronology asserted that the HAWK shipment was "not an authorized exception to [U.S.] policy," and was retrieved "as a consequence of U.S. intervention." [78] North conceded in his testimony that these changes in the chronology were an attempt to deal with the Arms Export Control Act problems that had been brought to his attention in his earlier conversations.[79]

After McFarlane's lengthy PROF message of November 18,[80] the HAWK shipment reference disappeared from the chronology and was replaced in its entirety with the precise language recommended by McFarlane—which made no reference to arms at all:

> Later in the fall, other transfers of equipment were made between Israel and Iran although some of the items were returned to Israel.[81]

The November 19, 11:00 a.m. edition of the chronology added that, in a December 1985 meeting with an Israeli official, McFarlane "made clear our strong objection to the Israelis shipment of HAWK missiles." [82]

On November 20, North and others turned to the proposed testimony that Casey was to give Congressional Intelligence Committees the next day. They faced the problem that a CIA proprietary airline had actually carried the HAWK missiles to Iran in November 1985, but the President had denied U.S. involvement in that weapons shipment at his press conference the day before. Certain members of the NSC staff developed what Regan later termed a "cover story:" that the U.S. Government had been told by the Israelis that the November 1985 shipment carried by the proprietary was "oil drilling equipment," not arms.

The "oil drilling equipment" cover story first appeared in the chronology on November 20 at 1:00 p.m., shortly before North, Poindexter, Casey, and others met to discuss Casey's testimony. It contained the following misstatements:

- In mid-November 1985, the Israelis said they were nearing a breakthrough and asked a U.S. official for an airline that could discreetly deliver passengers and "cargo" to Iran.
- Since the United States "had expressed so much displeasure over the earlier TOW shipment," the Israelis assured the U.S. Government that the cargo was "oil drilling parts." Only then did the U.S. pass the name of a "proprietary" airline to haul the shipment.
- Not until January 1986 did the United States learn that "the Israelis, responding to urgent entreaties from the Iranians, had used the proprietary aircraft to transport 18 HAWK missiles to Iran."
- The U.S. Government's "belated awareness" of this shipment "raised serious concerns that these deliveries were jeopardizing our objective of arranging a direct meeting with high-level Iranian officials." So Poindexter "noted our stringent objections to the HAWK missile shipment" to the Israelis and indicated that the United States would have to act to have them returned, as was done in February.[83]

Following the November 20 meeting to prepare Casey's testimony, and the subsequent objections to the proposed Casey testimony raised by the State Department, the cover story was amended—in what is believed to be the last version of the chronology—to delete all references to oil drilling equipment. The U.S. authorization of the November 1985 shipment, however, was still denied.[84]

The fictional accounts in the chronologies were not limited to the 1985 shipments. For example, the chronologies omitted the President's December 1985 Finding (which retroactively "authorized" the November shipment that the United States had supposedly objected to); affirmatively misrepresented that there had been consultation with "all appropriate" or "relevant" Cabinet officers during the initiative; and baldly asserted that all arms sales were "within the limits of established policy and in compliance with all U.S. law."

All of this was not the result of any memory lapse. The consequences of this exercise in falsifying the facts were severe. As North testified, by creating an erroneous version of the facts in the chronologies, those responsible were "committing the President of the United States to a false story."[85]

On November 20 and 21, Poindexter and Casey would take further steps in the same direction.

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*N 9368. These statements were true as far as they went; but the chronology remained silent on whether the United States had approved the shipment.

Casey and Poindexter Prepare for Congress

On November 21, Casey was scheduled to testify before the House and Senate Intelligence Committees, and Poindexter was to brief delegatons of the same Committees. On November 20, a meeting was held in Poindexter's office to review a CIA draft of Casey's proposed testimony and coordinate it with Poindexter's upcoming briefing. In attendance were Casey, Attorney General Meese, Poindexter, North, Cooper, Thompson, and Robert Gates of the CIA.[86] The CIA brought a proposed insert dealing with the November 1985 HAWK shipment. It said that the CIA had been told the shipment was oil drilling equipment.[87] During discussion of the insert, North suggested changing it to say that "no one in the U.S. Government" knew at the time that the November 1985 shipment contained arms. According to Cooper, North also stated at the meeting that the United States had to force Iran to return the 18 HAWKs that Israel had delivered in November, after learning a few months after-the-fact that arms had been shipped.[88] Both Meese and North made handwritten notes of North's points on the draft insert.[89] North's version was accepted.

The meeting lasted approximately 2 hours. Attorney General Meese had to leave early to make a speech that evening at West Point. After the meeting ended, Cooper was asked to come to White House Counsel Wallison's office. He went there with NSC general counsel Thompson. Wallison, Counsel to the President, strenuously objected to not having been included in the just-concluded meeting.[90]

During this session in Wallison's office, State Department Legal Adviser Abraham Sofaer telephoned Wallison, and indicated that there was a problem with Casey's proposed testimony. At Cooper's suggestion, Wallison returned Sofaer's call on a secure line. Sofaer advised Wallison that Secretary Shultz recalled a conversation with McFarlane in November 1985, in which McFarlane made specific reference to the shipment of HAWK missiles from Israel to Iran. Sofaer testified that he had also spoken with Deputy Attorney General Arnold Burns earlier in the day to apprise him of the discrepancy between Casey's draft testimony and Secretary Shultz's recollection. Burns told Sofaer that Attorney General Meese had been advised of this problem, and was aware of facts that would explain everything.*

Wallison advised Cooper and Thompson of Sofaer's report. Cooper then asked Thompson to contact North and McFarlane to get the facts straight. Cooper reminded Thompson of North's statement at the meeting earlier in the day that no one in the U.S. Government knew that the November 1985 shipment contained arms. Thompson agreed to contact North and McFarlane.[91]

Cooper then returned to his office, spoke by telephone to Sofaer, and asked if Secretary Shultz was certain of his November 1985 conversation with McFarlane. Sofaer replied that the State Department had a contemporaneous note written by Secretary Shultz's Executive Assistant, Charles Hill, of a conversation between McFarlane and Shultz on November 18, 1985, which contained the word "HAWKS." Sofaer told Cooper that if Casey's testimony were given in its current form, "he [Sofaer] would leave the Government," to which Cooper replied, "We may all have to." [92]

Cooper then telephoned Thompson, who said that North and McFarlane each stuck by his earlier story, that they had no contemporaneous knowledge that arms were shipped to Iran in November 1985. Cooper did not know who was right or wrong. Moreover, Sofaer told Cooper that if Casey testified that no one in the U.S. Government knew of the weapons shipment, Undersecretary Armacost would have to testify otherwise.[93]

Cooper then placed a secure call to Attorney General Meese at West Point, and the two agreed that the problem language should be deleted from Casey's proposed testimony. Attorney General Meese agreed also with Cooper's suggestion that he return immediately to Washington and take responsibility for "getting his arms around this . . . ." [94]

Cooper next spoke directly to Poindexter (who already had heard from Thompson), and Poindexter agreed that they would have to refrain from making the incorrect statement. Poindexter said he had attempted to discuss the issue with Casey, but that Casey was half-asleep when Poindexter called.[95] Accordingly, Cooper called CIA General Counsel David Doherty to advise him that the problem statement should be deleted. Doherty told Cooper that he already had changed Casey's testimony in that regard.[96]

In his public testimony, North conceded that the oil drilling equipment cover story agreed to at the meeting on November 20, 1986, was false. He played down his role in preparing Casey's testimony, however, and claimed that he acted promptly in a later private meeting with Casey to correct it. He testified that he corrected the proposed testimony even though "there are a lot of heroes walking around that have claimed credit" for causing the correction.[97]

Cooper's testimony conflicts with North's. According to Cooper, it was North who pushed strongly for the oil drilling equipment cover story and the claim that "no one in the U.S. Government" knew that missiles rather than oil drilling equipment were being shipped in November 1985. A one-page draft insert in

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*Sofaer Dep. at 38-41. Burns barely recalls the conversation, and Attorney General Meese has no recollection of talking to Burns about Sofaer's call. Meese Test., *Hearings*, 100-9, 7/28/87, at 221; Meese Dep., 7/8/87, at 70; Burns Int., 7/7/87.

North's handwriting corroborates Cooper's testimony.[98] So does the fact that the oil drilling equipment cover story was inserted into the NSC staff's chronology by North at 1:00 p.m. on November 20 shortly before the meeting with Casey.[99] Moreover, whatever efforts North made later to "correct" Casey's testimony, Casey told the oil drilling cover story to both Congressional Intelligence Committees the next day, modified so as to make it literally true but completely misleading.

The record makes clear that North, Poindexter, Casey, and others were engaged in a deliberate attempt to falsify the facts concerning the November 1985 HAWKs shipment. This point was illustrated in Donald Regan's testimony to the Committees. Regan testified that, although he was Chief of Staff, he was never consulted about the President's knowledge of the November 1985 shipment during the frantic effort to prepare a statement for Casey's testimony and Poindexter's Congressional briefing on what the U.S. Government knew.[100] When asked at the hearing about the assertion that the U.S. Government believed that the November shipment contained oil drilling equipment—Regan dubbed that claim, "the cover story."[101]

Poindexter, Casey, and the Intelligence Committees: November 21

November 21 was the day that Casey and Poindexter appeared before the Intelligence Committees of Congress—the event for which they had attempted to coordinate their statements on November 20. Their efforts continued on Friday morning, November 21, beset by the fact that their plan to present a well-orchestrated "cover story" about the November 1985 HAWK shipment had broken down.

At approximately 8:00 a.m., Cooper arrived at the CIA to ensure that the disputed language regarding the November HAWK shipment had been deleted from Casey's Congressional testimony. Cooper met with Casey. Casey accepted the revisions without comment.[102] After the meeting, CIA Associate General Counsel Jameson whispered to Cooper that during the November 1985 shipment, one of the pilots had radioed to the ground that the cargo was weapons.[103]

Poindexter was the first to brief members of the House and Senate Intelligence Committees. He related the cover story, not the actual facts. According to the memorandums of that meeting, Poindexter maintained that:

- The United States only learned of the August-September 1985 TOW shipments after the fact, whereupon the President expressed both his displeasure at the arms transfer and his appreciation for the subsequent release of hostage Benjamin Weir.
- The United States did not learn until January 1986 that Israel had transferred 18 HAWK missiles to Iran in November 1985, and the United States persuaded the Iranians to return the missiles to Israel in February 1986.
- He (Poindexter) had learned only the day before that there may have been prior U.S. knowledge concerning the November 1985 shipment.
- Finally, Poindexter promised the Senate Intelligence Committee that he would check into the facts and report back.[104]

Poindexter attempted to explain away his false statements by claiming during the hearings that he had forgotten all about the November 1985 arms shipment at the time of this Congressional briefing.[105] But Poindexter had been personally involved in this extraordinary shipment of HAWK missiles to Iran. North had written PROF notes and memorandums/ to Poindexter both before and after the November 1985 shipment explaining the problems in arranging it as well as the reason the Iranians had immediately rejected the HAWKs. Moreover, according to his testimony, on the first day that Poindexter served as National Security Adviser, December 5, 1985, he had obtained the President's signature on a Finding specifically designed to authorize, retroactively, and without notification to Congress, the U.S. Government's assistance with the November shipment and the attempted hostage trade—a Finding Poindexter destroyed only hours after he promised the Congressional Committees he would check into the facts and report back.[106]

Casey testified next as part of a panel including Undersecretary of State Armacost and Assistant Secretary of Defense Armitage. In his opening statement, Casey testified that the CIA was asked in November 1985 to recommend a proprietary to transport "bulky cargo." The crew was told, he said, that the cargo consisted of spare parts for the oil drilling fields in Tehran. The phrase "no one in the U.S. Government found out that our airline had landed HAWK missiles into Iran until mid-January" had been deleted from his opening statement. But Casey gave no indication that the CIA and NSC staff knew that the shipment was arms, not oil drilling equipment.[107]

Under questioning by Senate Committee Members, Casey, like Poindexter, reverted to the cover story:

> SENATOR LEAHY: . . . On November 25th a plane owned by a CIA proprietary . . . delivered 18 HAWK missiles from Israel to Iran I discussed this at some length with Admiral Poindexter this morning. You referred to it here. The

Admiral did not have many details on it. I think he said that he learned of this only yesterday, this shipment by a CIA proprietary of these HAWK missiles. Now, did the CIA know what was on that aircraft, the November 25th '85 aircraft?

MR. CASEY: There is some question about that. I was told yesterday the CIA didn't know it until later on.

SENATOR LEAHY: Did not know until later on?

MR. CASEY: Did not know until later on. Did not knew until the Iranians told them some time in January by way of complaining about the inadequacy of whatever was delivered.

SENATOR LEAHY: But my concern is that the NSC says now that they didn't know what was going on and that it just found out that the CIA sent that flight over, and they are trying to figure out why nobody knew what was on it, and now the CIA says well, we did this because the NSC requested it, and we didn't know exactly what they wanted. Do you understand why somebody raised the questions wondering whether there was just plausible deniability being set up here.

MR. CASEY: Hadn't thought about it. I hadn't thought about it.

SENATOR LEAHY: The question I ask, and I would hope that the Agency will give me a very full, clear, specific answer, is did they know at the time, and if they didn't know at the time, why not?

MR. CASEY: Well, I have inquired into that myself, and have been told, and as far as I can find out, the Agency did not know what it was handling at the time. Now, I am still going to inquire further into that." [108]

Before the House Permanent Select Committee on Intelligence, Casey's testimony concerning the November HAWK shipment was similarly misleading. When asked if the Israelis had made any shipments to Iran requiring advance notification or permission, Casey referred only to the August-September 1985 TOW shipments.[109]

Casey went out of his way on three occasions during his House Committee testimony to say that the NSC staff was "guiding and active in the private provision of weapons to the Contras." [110]

Chapter 19

1. Shultz Test., *Hearings*, 100-9, 7/23/87, at 35.
2. Ex. GPS-35.
3. *Id.*
4. Ex. GPS-36.
5. *Id.*
6. N 7796-99, Iran Press Guidance from Poindexter to Keel, 11/4/86; Ex. GPS-37.
7. Shultz Test., *Hearings*, 100-9, 7/23/87, at 38.
8. N 9028-29. Rod McDaniel Notes, 11/6/86.
9. Pres. Docs., 11/10/86, Vol. 22, No. 45, at 1534.
10. N 18467, PROF from Poindexter to McFarlane, 11/7/86, 22:55:45.
11. Ex. GPS-C.
12. Ex. DTR-41.
13. *Id.*
14. Ex. DTR-41A.
15. Ex. DTR-41.
16. Ex. DTR-41A.
17. *Id.*
18. *Id.*
19. N 10378-86.
20. N 8996.
21. Ex. DTR-41A.
22. Ex. GPS-38A.
23. Ex. GPS-38B.
24. Shultz Test., *Hearings*, 100-9, 7/23/87, at 41.
25. N 7827; N 9030, Notes from National Security Briefing, 11/12/86.
26. N 749, PROF from McFarlane to North, 11/11/86, 00:26:41.
27. N 18494; N 19113.
28. N 18476.
29. Ex. EM-21.
30. *Id.*
31. N 9031.
32. Tower, at D-12 & D-13.
33. Pres. Docs., 11/17/86, Vol. 22, No. 46, at 1561.
34. *Id.*
35. Shultz Test., *Hearings*, 100-9, 7/23/87, at 40; see Ex. GPS-C.
36. Ex. GPS-45.
37. Shultz Test., *Hearings*, 100-9, 7/23/87, at 42-43; see Ex. GPS-42, at 12.
38. Shultz Test., *Hearings*, 100-9, 7/23/87, at 43.
39. Ex. EM-23.
40. Cooper Test., *Hearings*, 100-6, 6/25/87, at 228-34.
41. *Id.*
42. *Id.*
43. Sofaer Dep., 6/18/87, at 8-21.
44. *Id.*
45. *Id.*, at 21-28; Sofaer Dep. Ex. 1.
46. C 005.
47. C 006.
48. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 166-69.
49. *Id.*, at 68.
50. Cooper Test., *Hearings*, 100-6, 6/25/87, at 237-39.
51. Ex. EM-32.
52. Regan Test., *Hearings*, 100-10, 7/30/87, at 24-25.
53. Shultz Test., *Hearings*, 100-9, 7/23/87, at 44.
54. *Id.*, at 44.
55. *Id.*, at 40.
56. *Id.*, at 44.
57. Shultz Test., *Hearings*, 100-9, 7/23/87, at 45.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 30-33, 35.
63. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 108; 7/20/87, at 274.
64. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 108-09; 7/17/87, at 144; 7/20/87, at 302-03; McFarlane Test., *Hearings*, 100-2, 5/11/87, at 67, 78-79; 5/12/87, at 93, 106-07.
65. N 5617-20.
66. N 7501.
67. N 9314-15.
68. N 9368.
69. *Id.*
70. Q 2629, Q 2632.
71. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 17-18; Q 2629, Q 2632.
72. N 5648.
73. N 12188-90. PROF from McFarlane to Poindexter, 11/18/87, 23:06.
74. N 5661, N 2971, N 42315, N 9385.
75. N 5617-20.
76. N 5576.
77. N 8255; N 5592.
78. N 5655.
79. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 47.
80. N 12188-90.
81. Ex. 57. (RCM).
82. N 5667.
83. N 5679.
84. N 9385.
85. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 35-36.
86. Cooper Test., *Hearings*, 100-6, 6/25/87, at 239; Meese Test., *Hearings*, 100-9, 7/28/87, at 217.
87. Ex. CJC-6.
88. Cooper Test., *Hearings*, 100-6, 6/25/87, at 245-46.
89. Meese Test., *Hearings*, 100-9, 7/28/87, at 218-19.
90. Cooper Test., *Hearings*, 100-6, 6/25/87, at 239.
91. *Id.*, at 248-49; Sofaer Dep., 6/18/87, at 42-49.
92. Cooper Test., *Hearings*, 100-6, 6/25/87, at 244-50; Sofaer Dep., 6/18/87, at 48.
93. Cooper Test., *Hearings*, 100-6, 6/25/87, at 249-50.
94. *Id.*, at 250.
95. *Id.*, at 251.
96. *Id.*, at 239-52.
97. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 37.
98. Ex. OLN-31.
99. Ex. OLN-23.
100. Regan Test., *Hearings*, 100-10, 7/30/87, at 26.
101. *Id.*, at 24.
102. Cooper Test., *Hearings*, 100-6, 6/22/87, at 252.
103. *Id.*, at 266.
104. Exs. JMP-70, JMP-79, JMP-80.
105. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 113.
106. *Id.*, at 123.
107. Casey, HPSCI Test., 11/21/86, at 6; Casey, SSCI Test., 11/21/86, at 9.
108. Casey, SSCI Test., 11/21/86, at 31-36.
109. Casey, HPSCI Test., 11/21/86, at 46.
110. *Id.*, at 65. *See also id.*, at 42-43, 46.

Chapter 20

November 1986: The Attorney General's Inquiry

The Attorney General's Inquiry Is Launched

When Attorney General Edwin Meese returned to Washington on the morning of November 21, he immediately convened his top advisers to discuss the Administration's conflicting versions of what had actually happened in November 1985. Present were Deputy Attorney General Arnold Burns, John Richardson (the Attorney General's Chief of Staff), William Bradford Reynolds (Assistant Attorney General for the Civil Rights Division), and Charles Cooper (Assistant Attorney General for the Office of Legal Counsel).[1] Cooper briefed the group on the discrepancies between the proposed Casey testimony and the facts as recalled by others in the Administration. The Attorney General decided to propose to the President that he be commissioned to gather the facts so that the Administration would be speaking with one voice.[2]

At 9:22 a.m., the Attorney General called Poindexter on a secure telephone and told him to arrange a meeting among themselves, the President, and Donald Regan.[3] According to Regan, Attorney General Meese met with him before they went to see the President on the morning of November 21. Attorney General Meese told Regan he was having trouble getting the facts in one place, and that a full investigation should be made.[4]

At approximately 11:30 a.m., Attorney General Meese, Regan, and Poindexter met with the President. According to Attorney General Meese, he told the President that the Administration did not have a coherent picture of the Iran initiative because the operation was so heavily compartmentalized. Attorney General Meese suggested that he be authorized to gather the facts to present an accurate overview for the President and the public. The President acceded. It was agreed that over the weekend the Attorney General would try to gather the facts in time for the previously scheduled National Security Planning Group (NSPG) meeting on Monday, November 24. Attorney General Meese testified that when he embarked on this effort he was acting as "legal adviser to the President." *

Meanwhile, at 11:00 a.m., Ledeen and McFarlane met at Ledeen's home to discuss the extent of the arms sales transactions. McFarlane said he was clear on everything except the November 1985 shipment.[5] North appeared at Ledeen's home about 12:30 p.m., "in some distress" according to McFarlane.[6] Ledeen testified that both North and McFarlane referred to meetings with the Attorney General.[7] McFarlane agreed to drive North back downtown. During the drive, North told McFarlane that he was concerned Ledeen may have made money on the arms transactions, a concern that North denied in his public testimony.[8] North also told McFarlane that he was going to have a "shredding party that weekend." McFarlane testified that he responded, "Ollie, look, you have acted under instruction at all times and I'm confident that you have nothing to worry about. Let it all happen and I'll back you up." [9] North denied using the term "shredding party," but recalled telling McFarlane that all key documents already had been destroyed.[10]

Meese arrived back at the Justice Department at 12:45 p.m. and advised Reynolds, Cooper, and Richardson that the President had authorized him to "get his arms around the Iranian initiative." [11]** Meese then met with FBI Director William Webster on an unrelated matter. When Webster brought up the confusion surrounding the Iran arms sales, Attorney General Meese advised that the President had asked him to conduct a factual inquiry because different participants had different pieces of knowledge to be reconciled. Attorney General Meese declined an offer of FBI assistance from Webster, stating that he saw nothing criminal in the arms sales. Webster agreed that absent evidence of a crime, the FBI should not

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*Meese Test., *Hearings*, at 100-9, 7/28/87, at 224; Meese Dep., at 82-84. North and Poindexter also characterized Meese's role as that of "friend" of the President, not Attorney General. North Test., *Hearings*, 100-7, Part II, 7/14/87, at 186-187; Poindexter Test., *Hearings*, 100-8, 7/16/87, at 133-134. Poindexter described Meese's role as a "special adviser," *Id.*

**The Attorney General instructed Richardson to keep a log of all meetings the Attorney General had during this inquiry, including the time of the interviews, meetings and those in attendance. Richardson Dep., 7/22/87, at 34-35.

be involved.[12] Attorney General Meese did not relate the details surrounding Casey's testimony or the possible violations of the Arms Export Control Act arising from the 1985 shipments.[13] The Attorney General also testified that he did not bring in the FBI because he and Webster concluded that it would not be "appropriate." [14]

According to North's deputy, Robert Earl, North came to his office during the afternoon of November 21 and told Earl that he had just attended a meeting at the White House, and that the Attorney General was sending a Justice Department team to the National Security Council because the Congressional briefings had raised questions. According to Earl, North said he had asked Attorney General Meese, "Can I have or will I have 24 or 48 hours" and Meese responded that he did not know whether North would have that much time.[15] The Attorney General recalled no such conversation with North; North denied it; and there is no other evidence that North met with the Attorney General that day.[16] Earl testified further that North asked for Earl's Iran file, remarking that "It's time for North to be a scapegoat." Earl stated that, when he gave his file to North, he could tell that he would never see it again. Earl was right.[17]

That afternoon, Attorney General Meese selected his factfinding team. He chose two political appointees and one person from his personal staff. He selected Cooper because he was already looking into the matter as head of the Office of Legal Counsel, which provides advice to the executive branch on various legal matters, including national security. Richardson was the Attorney General's Chief of Staff. Reynolds was assigned because, in addition to his responsibilities as Assistant Attorney General for Civil Rights, he coordinated certain national security matters and was Counselor to the Attorney General.[18]

Meese testified that he never considered assigning attorneys from the Office of Intelligence Policy and Review, whose job it is to review covert action findings and applications for intelligence surveillance activities. Nor, according to the Attorney General, did he consider assigning additional attorneys to assist with the formidable tasks of document review and witness interviews. No members of the Criminal Division were included, even though William Weld (Assistant Attorney General in charge of the Criminal Division) told Cooper and Reynolds at a staff meeting that morning that he thought the Criminal Division should be involved.[19] Meese testified that it was his view at the time that there was no reason to believe any crime had been committed or that any criminal investigation was required.[20]

At their meeting on Friday afternoon, the factfinding team formulated a list of witnesses to be interviewed. It included McFarlane, North, Secretary Shultz, Secretary Weinberger, the Vice President, Paul Thompson, Stanley Sporkin, John McMahon, Charles Allen, the CIA's Deputy Director for Operations, the CIA Deputy Chief Counsel, and CIA operations officers. Meese listed items that needed action, including contacting Poindexter to gather documents and Casey to arrange interviews of Sporkin and McMahon. The focus of the inquiry was to be the November 1985 HAWKs shipment.[21]

The NSC Staff Responds by Altering and Destroying Evidence

Once those at the center of the Iran arms sales were alerted to the Attorney General's inquiry, they took steps, in Colonel Earl's words, to "close down the compartment"—destroy all the documentary evidence.[22]

North met with Poindexter at 1:30 p.m. and then again at 2:25 p.m. on November 21.[23] Sometime that same afternoon, North instructed his secretary, Fawn Hall, to alter a series of official action memorandums that he had written during the previous year to then-National Security Adviser McFarlane. These memorandums related to North's activities in raising funds and arranging military assistance for the Contras during the period of the Boland Amendment. McFarlane had told North a year earlier, during the 1985 Congressional inquiry, that these memorandums raised significant problems under the Boland Amendment.[24] McFarlane had given North a handwritten list containing the NSC's "System IV" identification numbers of the problem documents.* North kept McFarlane's list taped to his desk near the computer terminal during the ensuing year.[25]

Sometime on November 21, 1986, North requested the originals of the documents on McFarlane's list from the System IV security officer, who found and provided North with all but one.** There is no evidence that the System IV security officer knew of North's purpose in requesting these documents.

North then proceeded to alter the original System IV documents by hand. The gist of his alterations was to eliminate references to the funds raised for the Contras from third countries during the Boland cutoff, and also to eliminate or obscure passages in the documents that showed the NSC staff's active role in facilitating the provision of military intelli-

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*Hall Test., *Hearings*, 100-5, 6/8/87, at 478-79; North Test., *Hearings*, 100-7, Part I, 7/8/87, at 173. Ex. FH-1. The NSC maintains a document tracking and filing system that includes assigning discrete numbers to documents prepared by the NSC staff. "System IV" is utilized for the most sensitive, intelligence-related documents.

**Ex. FH-1A; Ex. OLN-71. The one document that the security officer could not find (System IV # 40124), he presumed to have been destroyed and so advised North. In fact, the document, which had been written in December 1984, was in the files, but the security officer had checked only the files for 1985. This December 1984 document which North had sought to alter recounted a meeting that North had held with an official of Country 4 to solicit lethal assistance for the Contras. Ex. GJS-1. The document was provided to the Committees during the Committees' investigation. See Hall Test., *Hearings*, 100-5, 6/8/87, at 278.

gence and other lethal assistance for the Contras during the same period.[26]

North gave the doctored documents to Hall and instructed her to prepare new originals containing North's changes. Hall testified that she followed North's instructions without paying attention to the nature of the alterations or asking their purpose. She admitted, however, that she did not feel comfortable, but assumed North had a valid reason. She stated also that she did not then know that the Attorney General had commenced an investigation or that his representatives would shortly be reviewing NSC documents.[27]

After making the alterations, Hall destroyed the original documents and was preparing to replace her file copies of the original versions of the documents with copies of the altered originals when she was distracted by North's shredding of documents and volunteered to help.*

The document shredding involved North, Hall, and Earl. North pulled documents from his safe; Hall shredded them. Earl brought documents down from his office, and these, too, were shredded.[28] Hall asked North if she should shred his telephone logs, and he agreed. Hall also shredded PROF notes and KL43 messages.** She could not recall what other types of documents went into the shredder. But the quantity was large—approximately one and one half feet of documents. Indeed, so many documents were destroyed that the shredding machine actually jammed and Hall needed assistance from the Crisis Management Center to reactivate it. Hall testified that, although documents were normally shredded in North's office, never before had there been such an organized program of document destruction or such a large volume of documents destroyed.[29]

Although Hall stated that, when she participated in the shredding—as in the alteration of documents—she did not know of the Attorney General's inquiry, North and Earl certainly knew. Yet they both maintained in their testimony that the document destruction was justified to protect the security of the covert action or, as Earl put it, "the compartment." [30] But in fact, the investigators from whom North and Earl were suppressing this evidence were officials of their own Government who had been directed to investigate by the President.

Poindexter, too, destroyed evidence. At aproximately 3:00 p.m. on November 21, the Attorney General telephoned Poindexter and requested that he make available for review all documents relating to the Iran initiative.[31] Poindexter then ripped up the only signed copy of the President's December 1985 Finding, which retroactively authorized U.S. participation in the November 1985 arms shipment. Poindexter admitted at the public hearings that he destroyed this Finding because it described the Iran initiative as unambiguously arms-for-hostages, and therefore would have been politically embarrassing to the President.[32] It also would have stripped away the cover story concocted by the NSC staff. It would never reach the investigators.

Since the President had obviously been aware of the December 1985 Finding when he signed it, Poindexter could not explain why he thought that destroying of this Presidential record would nullify its existence [33]—unless he somehow felt confident that the President would either fail to recall the Finding or deny that he had ever signed it. As recently as a week before Poindexter's public testimony, the White House announced that "[o]ur position is that [the Finding] never went to the President, period." [34]

Poindexter's participation in destroying evidence did not stop with the Finding. He also tore up certain PROF notes possibly used to brief the President, which had been stored with the Finding. Although Poindexter said he could not recall their content, these documents were of sufficient importance to be locked with the original Finding in Poindexter's secure safe.[35]

In addition, during the afternoon of November 21, North came to Poindexter with his 1985 spiral notebook which contained North's contemporaneous notes regarding the November 1985 HAWK shipment.[36] Those notes showed that North and others in the U.S. government were involved with that shipment.[37] Like the Finding, the notes belied Poindexter's statement to Congress earlier that day that the United States did not learn of the true contents of the shipment until after it was made. Moreover, although Poindexter testified at the public hearings that North's notes did not reflect that the President had approved the HAWK shipment,[38] in fact, North's notes of November 26, 1985 actually read: "R.R. directed operation to proceed. If Israelis want to provide different model, then we will replenish." [39] Poindexter did not object to North's announced intention to destroy the notebook.[40]

North, Poindexter, and their aides were not the only persons involved in the Iran-Contra Affair to destroy evidence in November 1986. Documents were also shredded at the offices of Secord's company, Stanford Technology Trading Group International (STTGI). According to the testimony of Secord's Administrative Assistant, Shirley Napier, the documents

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*Hall Test., *Hearings*, 100-5, 6/8/87, at 499-502. Because Hall ultimately did not complete the alteration process (by substituting copies of the altered documents for her file copies of the originals), both versions of the documents were found in the NSC files and provided to the Committees during the Committees' investigation. Exs. FH-2 through FH-6A.

**When these PROF notes were destroyed, North and others apparently believed that those messages were gone forever. They did not know that, unless messages were deleted from the computer memory itself, the messages still could be retrieved for a time. Such retrieval took place, and that is why the Committees were able to obtain at least some PROF messages that North and others believed to have been destroyed.

destroyed at STTGI included steno books, telephone logs, and telexes. The destruction continued over a period of days. The participants were Secord, Robert Dutton, Napier, and an STTGI secretary.[41]

Napier originally testified that the shredding activity occurred early in December 1986.[42] Several weeks after her deposition, Napier submitted an affidavit changing her testimony, based on refreshed recollection, to place the shredding during the week of November 17, 1986, "probably the 19th through the 21st"—the same week as the shredding in the White House.*

North and McFarlane took other actions on November 21 in response to the Attorney General's investigation. At 3:15 p.m., North met again with Ledeen, this time in North's office, and discussed the November 1985 HAWK shipment. North knew that Ledeen could testify to U.S. involvement. He asked how Ledeen would respond to questions regarding the shipment. Ledeen replied that he would say he was aware of the shipment but did not know who authorized it or how or when the authorization took place. North said that was fine. North stated also that he had been saving things for "his grandchildren" which he would now have to shred.**

The Attorney General's investigation went forward later that afternoon with an interview of McFarlane by Meese and Cooper. Attorney General Meese urged McFarlane to tell the whole truth, assuring him this was in the President's interest. McFarlane said he believed that the November 1985 shipment contained oil drilling equipment until he was told otherwise in May of 1986.[43] When asked if he had told Secretary Shultz in 1985 about the HAWK shipment, McFarlane said he could not recall, but did not dispute it. Cooper testified that neither he nor the Attorney General told McFarlane that Secretary Shultz had a contemporaneous note indicating that McFarlane had told him about the HAWK shipment before it occurred.[44] But McFarlane testified that he learned of the note from the Attorney General at that same interview.[45] McFarlane's version is corroborated by the fact that he called the State Department right after the interview asking for a copy of the note.[46] The note, of course, was highly significant, because it was the only existing document known to McFarlane that indicated that U.S. officials did indeed know of, approve, and had participated in, the HAWK shipment. North and Poindexter apparently believed they had destroyed or otherwise removed all other such documentary evidence.

During the Attorney General's interview, McFarlane did not volunteer anything about the document shredding comment from North earlier in the day. Nor did McFarlane volunteer that he knew that proceeds of the Iran arms sales had been diverted to the Contras.[47] McFarlane testified that he should have told the Attorney General, but it did not occur to him to mention these facts.[48]

At the conclusion of the interview, after Cooper had left, McFarlane stayed behind to speak privately to Meese. He told Attorney General Meese that although he had taken full responsibility in a speech delivered the night before to "protect the President," he wanted Meese to know that the President was "four square" behind the Iran initiative.[49] According to McFarlane, the Attorney General said it was preferable legally if the President had authorized the early shipments.[50]

Immediately after leaving the Attorney General's office, McFarlane used a pay telephone outside of the Justice Department to call North.[51] North's notes of that call indicate that McFarlane said he was told that the Arms Export Control Act was not a problem and that "RR" [Reagan] would be supportive of a "mental finding." McFarlane sent Poindexter a PROF note later that evening similarly describing his meeting with the Attorney General. In that note he stated:

> [I]t appears that the matter of not notifying [Congress] about the Israeli transfers can be covered if the President made a 'mental finding' before the transfers took place. Well in that sense we ought to be OK because he was all for letting the Israelis do anything they wanted at the very first briefing in the hospital. Ed [Meese] seemed relieved at that.[52]

While the Attorney General and Cooper met with McFarlane, Reynolds, and Richardson spent Friday afternoon at the Justice Department doing routine work and reading the NSC staff's chronologies.[53] Attorney General Meese testified that he did not send anyone to review the NSC documents on Friday afternoon, despite the short reporting deadline of Monday afternoon, because "there was no urgency to it." [54] It was midafternoon anyway and the NSC staff needed time to prepare their documents for review.[55]

After the McFarlane interview, Meese, Cooper, Reynolds, and Richardson made plans to meet the next morning. Sometime in the early evening, Secretary Shultz called to tell Meese that he was available

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*Napier Aff., 5/11/87, at Par. 7. Dutton maintained at the hearing that the document destruction at STTGI was undertaken because "[w]e had a great concern about the security of the office . . . It was General Secord's desire that we don't have any superfluous material laying around the office." But since Dutton also testified that the only records of his that were shredded were supposedly duplicates, he could not explain how destruction of only the duplicates preserved operational security. In any event, Dutton did not testify that the numerous other documents shredded at STTGI were only duplicates. Dutton Test., *Hearings*, 100-3, 5/27/87, at 251.

**Ledeen Dep., 6/19/87, at 22. Ledeen also recalled in his deposition that, prior to November 21, North had told him that the Justice Department was investigating the possibly illegal sale of HAWK missiles in 1985 and suggested that Ledeen retain an attorney. North told Ledeen that he also had been advised by someone from the Justice Department to get an attorney. *Id.* at 9-10, 27.

for an interview the following morning. Meese also called Secretary Weinberger,[56] who told Meese that he could be reached that weekend at the hospital to which his wife had been admitted. Subsequently, Attorney General Meese spoke to Secretary Weinberger over the weekend and, although he could not recall what Secretary Weinberger said, he remembered concluding that Secretary Weinberger had no useful information.[57]

On November 21, Attorney General Meese called Casey to let him know about the inquiry and what he would be doing at the CIA. Meese also mentioned he wanted to meet with Casey over the weekend.[58]

Later that evening, Cooper made arrangements for John McGinnis, an attorney from the Justice Department's Office of Legal Counsel, to review intelligence reports regarding the Iran arms sales. McGinnis reviewed these reports overnight and reported back to Cooper that they indicated that the U.S. was involved in the 1985 Israeli shipments.[59] According to the Attorney General's statement during his November 25 press conference, these reports also indicated that excess profits from the sale had been made available for some other purpose.[60]

As the day drew to a close, North remained late in his office to meet with Richard Miller, a private fundraiser for the Contra cause, who arrived at North's office as North was packing his briefcase. North asked Miller to drive him to Dupont Circle. Either during that drive, or the day before, North told Miller that the Attorney General had advised him to get an attorney. The Attorney General denied telling North to get an attorney; and North testified that it was Casey who so advised him.[61] Miller dropped North at the office building of North's attorney.[62]

November 22: Diversion is Discovered

With the first McFarlane interview behind them, Attorney General Meese and Cooper began their interview schedule in earnest early Saturday morning. At 8:00 a.m. they interviewed Secretary Shultz and his assistant Charles Hill at the State Department.[63] Regarding the November 1985 shipment, Secretary Shultz said that on November 18, 1985, McFarlane told him that Israel was going to send HAWK missiles to Iran in a trade for the release of U.S. hostages. Secretary Shultz also informed Meese and Cooper that the President had told him earlier that week that he [the President] had contemporaneous knowledge of the November 1985 HAWK shipment.[64] Meese and Cooper asked Hill for the notes of the Shultz/McFarlane conversation, which Hill provided on Monday morning, November 24.[65]

Secretary Shultz testified that, during his interview, he expressed concern that the Iran arms sales might be connected to the Contras. Secretary Shultz said in his testimony he based this concern on the fact that Southern Air Transport's name had come up in the Contra resupply operation and also in the Iran arms transactions.[66] Secretary Shultz's version of this event is corroborated by Hill's contemporaneous notes of Meese's interview of Shultz. Those notes reflect that Secretary Shultz told Meese: "Another angle worries me. Could get mixed up with help for freedom fighters in Nicaragua. One thing may be overlapping with another. May be a connection." [67]

During his public testimony, Attorney General Meese initially denied that Secretary Shultz had ever mentioned any connection between the Iran arms sales and the Contras. When Hill's notes were shown to the Attorney General at the hearings, Meese denied that the notes were made at the interview, and stated they were notes of a later meeting at the State Department between Shultz and State Department Legal Adviser Abraham Sofaer.[68] During his next day of testimony, Meese stated that the reference to a connection between the Iran arms sales and the Contras was only to "a political connection that enemies of the administration would love to wrap together" (which also appears in Hill's notes). Attorney General Meese denied that Secretary Shultz was referring to any actual connection between the Iran arms sales and the Contras.[69]

Secretary Shultz's version is corroborated by Hill's contemporaneous notes of Shultz's interview with Meese. Moreover, on November 23, the day after Secretary Shultz's interview with Meese, Sofaer told Cooper that he was concerned that the surplus of funds from the Iran arms sales had possibly been used by Southern Air Transport to subsidize the Contra resupply efort.[70]

After Secretary Shultz's interview, the factfinding team decided that Reynolds and Richardson should go to the NSC to review documents. They were to look in particular for documents that would indicate whether the 1985 shipments were authorized by the U.S. Government.[71]

After Reynolds and Richardson left for the NSC, Attorney General Meese and Cooper interviewed Stanley Sporkin, former General Counsel to the CIA.[72] Sporkin told them that he drafted a Finding in November 1985 after he learned that the CIA had assisted in arranging transportation of the HAWK missiles to Iran.[73]

Reynolds and Richardson arrived at the West Wing of the White House sometime after 11:00 a.m. NSC General Counsel Paul Thompson escorted them to North's office in the Old Executive Office Building, where they met Earl. The Justice Department officials told Earl they only wanted to see documents relating to the Iran initiative. Earl pulled out accordion-style brown folders from the shelves behind North's desk and placed them on the table.[74]

Richardson also asked for documents from Poindexter's and Thompson's files. Thompson replied that they did not have any because as soon as they had read the documents, they sent them back to the originating office.[75]

Reynolds and Richardson began to review the documents on the table at approximately noon. According to Reynolds, sometime during the first hour of their review, Reynolds came across an undated, unsigned memorandum describing the particulars of a proposed Iran arms transaction to take place in early April 1986. He read the memorandum and put it back. He saw another version of the memorandum with additional information describing an upcoming shipment of arms to Iran including a financial breakdown of the transaction. Reynolds did not set aside either of these memorandums for copying. He recalled that neither version included any section setting forth the diversion of arms sales funds to the Contras. To the best of the Committees' knowledge, these versions have never been recovered.[76]

Reynolds continued his document review of a folder containing intelligence reports. In the back of this folder was a white folder stamped with a red White House label which contained what appeared to be a third version of the memorandum he had seen earlier. He quickly flipped through it. He noted that page 5 included a paragraph stating that $12 million worth of residual funds from the arms sales would be used to purchase supplies for "the Nicaraguan Democratic Resistance Forces." This materiel was needed to "bridge" the gap between current shortages and "when Congressionally approved lethal assistance . . . can be delivered." [77]

Reynolds was shocked. He passed the memorandum to Richardson. Richardson read it and was also surprised. Reynolds intentionally did not clip the document so as not to draw attention to it, but returned it to the file where he could later find it. He continued reviewing other documents.[78]

At approximately 1:45 p.m. Reynolds and Richardson broke for lunch with Cooper and Attorney General Meese. On the way out, they met North. Reynolds told North they had not seen any 1985 files, and North promised to produce them.[79]

During lunch at the Old Ebbitt Grill, Reynolds told Attorney General Meese and Cooper he had found a memorandum which indicated that $12 million generated from the Iran arms sales may have gone to the Contras. Attorney General Meese and Cooper expressed great surprise. There was discussion of whether North wrote the memorandum. The remainder of the lunch was devoted to a discussion of the 1985 shipments and the data collected by McGinnis. There was no discussion of securing documents.[80]

The Attorney General's methodology for conducting the inquiry changed at this point. Before discovery of the diversion memorandum, all interviews were conducted by the Attorney General with another Justice Department official and notes were taken. Thereafter, with the exception of the North interview, all interviews conducted by Meese were one-on-one, with no notes taken—including interviews of Casey, McFarlane, Poindexter, Regan and the Vice President.*

After Reynolds and Richardson had left the NSC for lunch on November 22, North reviewed more documents and selected some for shredding. North's office shredder was jammed, however, and other likely locations in the Old Executive Office Building were not open. Later, Earl saw North with a file full of documents standing beside Paul Thompson. North indicated he was going to the White House Situation Room to use the shredder there.[81]

North testified that he was actually shredding documents in his office while Reynolds and Richardson were present.[82] However, Reynolds and Richardson denied this, and Earl, as noted, testified that North's office shredder was jammed.[83]

While the Attorney General's team was meeting at the Old Ebbitt Grill, Casey and Poindexter were also having lunch together. They were joined by North. In his testimony, Poindexter recalled very little about that 2-hour lunch other than that it was initiated by Casey and that Casey discussed his testimony before the House and Senate Intelligence Committees the day before.[84]

Reynolds and Richardson returned to the NSC at approximately 3:30 p.m. where they found North and Earl. Richardson testified that everything appeared to be as they had left it.[85]

While Reynolds and Richardson reviewed documents, North worked at this desk and spoke on the telephone. Richardson took notes of some of these calls. He overheard North speak to an Israeli using various code words, including "Beethoven" in reference to Poindexter. North told the Israeli that a lot had come out about the Iran initiative already, but the most sensitive information had not been exposed.[86]

During that afternoon, North sat down with Reynolds and Richardson and told them he was ready to answer their questions. They responded that they were there only to review documents and the Attorney General would interview North later.[87] According to Richardson, North said "he knew he would not be long for this job." [88]

Reynolds and Richardson reviewed documents until approximately 7:15 p.m., at which time they and North left North's office. Reynolds and Richardson made plans to complete their review Sunday morning.[89]

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*Meese Test., *Hearings*, 100-9, 7/29/87, at 78-81. Meese testified that the reason he did not take notes of his interviews with Casey, McFarlane, Poindexter, Regan or the Vice President was that he was not attempting to solicit a great deal of information, but merely trying to confirm what North had said. *Id.* at 331-34.

North called Attorney General Meese at 3:40 p.m. that afternoon to arrange the interview.[90] Meese asked to interview North on Sunday morning, but North said he wanted to attend church and take his family to lunch first. Meese agreed to set the interview for 2:00 p.m.[91]

Six minutes after North spoke to Meese on November 22, Casey called Meese and said there were matters he wanted to discuss with him.[92] The two met at Casey's home at 6:00 p.m.[93] By the time of this meeting, Attorney General Meese had reason to believe that the CIA's version of Casey's proposed testimony was almost certainly false. Indeed, by then Attorney General Meese had interviewed Secretary Shultz, who had contemporaneous documentation for his recollection of the November 1985 HAWKs shipment, and former CIA General Counsel Sporkin, who had been told by Casey's subordinates in November 1985 that missiles were shipped. On another issue, the Attorney General had strong reason to believe there was a connection between the arms sales (in which the CIA had been involved) and the Contras: the diversion memorandum.

Despite Casey's obviously central position in any investigation of these matters, Attorney General Meese chose to meet Casey alone. He took no notes of the meeting, nor was the meeting otherwise recorded. The Committees' information about the meeting is thus derived solely from Attorney General Meese's testimony.

According to Meese, Casey said that he had been contacted in October 1986 by a former business associate named Roy Furmark. Furmark told Casey that certain Canadians who had financed the Iran arms sales had not been repaid and were therefore threatening to expose the arms sales. Furmark had represented that the Canadians would claim that the proceeds had been used for "Israeli or United States Government projects." [94] The Attorney General explained that Casey said he had not told him about the Furmark visit earlier because, before the factfinding inquiry began, there was no reason to tell the him.[95]

In testimony before the Senate and House Intelligence Committees in December 1986, Attorney General Meese was not specifically asked about, and he did not volunteer any reference to, proceeds being diverted to Israeli or U.S. projects.[96]

Attorney General Meese has consistently claimed that he did not tell Casey about the diversion memorandum, or ask him about the diversion, even though Meese recognized it as a bombshell as soon as his staff reported it to him. The reason Attorney General Meese gave for not asking Casey about the diversion memorandum was that he thought it inappropriate to do so until North was questioned. Attorney General Meese also testified that, despite the fact that Casey mentioned a claim that proceeds had been diverted to U.S. projects, Attorney General Meese did not feel the conversation could logically have led to questions regarding a diversion of those proceeds to the Contras without revealing to Casey what Meese knew. Attorney General Meese testified that, "I felt it was not appropriate to discuss this with anyone, even as good a friend as Mr. Casey, until I found out what it was all about." So, in a meeting that lasted between 30 minutes and an hour, Meese, according to his testimony, avoided the subject.[97]

While Casey and Meese were meeting, Cooper and Associate Deputy Attorney General William McGinnis were at the CIA interviewing attorneys from the CIA General Counsel's office and operations officers regarding the events surrounding the November 1985 HAWK shipment and subsequent Finding.[98] Cooper purposely did not ask questions at the CIA about the diversion for fear it would get back to North.[99] Cooper did not mention the diversion memo to McGinnis.

November 23: Investigation and Obstruction Continue

The Attorney General's investigation continued to build on Sunday, November 23 toward the afternoon interview with North. From 9:00 a.m. to noon, Cooper and McGinnis completed more interviews at the CIA. Reynolds and Richardson returned to the NSC to continue their document review, although they apparently never did complete it.[100]

At the CIA, Cooper and McGinnis interviewed Charles Allen, Duane Clarridge, George Jameson, and David Doherty. McGinnis interviewed Clarridge, who told him that the CIA's involvement in November 1985 was limited to providing to North the name of a proprietary airline to fly oil drilling equipment to Iran. Clarridge also explained that he made arrangements for flight clearances.*

Meanwhile, North, who had told the Attorney General he was not available for an interview until the afternoon because he wanted to go to church, called McFarlane Sunday morning and asked to meet with him. McFarlane was getting ready to leave for church himself and told North to meet him at his office at noon. North said he would bring his attorney.[101] North arrived alone at McFarlane's office at 12:30 p.m.. North told McFarlane everything was on track except for one thing that could be a problem: the diversion. According to McFarlane, he asked

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*Cooper Dep., 6/22/87, at 180. Evidence before the Committees shows that Clarridge was sent a cable from a CIA Chief in Country 15 on or about November 23, 1985, reporting the HAWKs-for-hostages November deal. Notably, the cable is missing from the CIA's files. Hearings, 6/24/87, at 260-73; CI-C27. The missing cable, if found, would have punctured any claim that no one at the CIA was aware in November 1985 prior to the HAWK shipment that the flight clearance problems and the use of a CIA proprietary airline involved the shipment of weapons to Iran. *Id.* This episode is discussed in more detail in Chapter 10.

North if the diversion had been approved and North replied that he would not do anything that was not approved. North said that the diversion was a matter of record in a memorandum he had written for Poindexter. North did not explain to McFarlane why he thought the diversion could be a problem in light of his belief that all documents relating to the diversion had been destroyed.[102] On the other hand, North testified that he recalls only assuring McFarlane that all diversion documents had been destroyed; he expressly did not recall telling McFarlane that there was a memorandum describing the diversion that might cause a problem.

At that point, attorney Thomas Green arrived at McFarlane's office. Green told McFarlane he had been an Assistant U.S. Attorney and had dealt with problems of this kind before. Green advised McFarlane and North to state the story truthfully and let the chips fall where they may.[103] Not long thereafter, Richard Secord arrived as well, but by that time, McFarlane had to leave for an appointment.

From approximately 12:45 p.m. to 2:00 p.m., Attorney General Meese, Reynolds, Cooper, and Richardson met to discuss the upcoming interview of North.[104] North arrived, alone, at approximately 2:15 p.m. Meese did most of the questioning. Richardson and Reynolds took notes.[105]

The Attorney General began by telling North he wanted all the facts, and did not want North to coverup to protect himself or the President. He then asked North to explain the arms sales from the beginning. North replied with a combination of fact and fiction. All the while he knew that the Attorney General was acting under orders from the President and that the Attorney General's findings would be reported back to the President.[106]

North said he was unaware of the first shipment of 504 TOWs until after it occurred. Regarding the November 1985 HAWK shipment, North said he received a call from McFarlane in Geneva who told him to contact Israeli Defense Minister Rabin to help Israel move something to Iran. North then claimed that Defense Minister Rabin told him it was oilrelated equipment. North sent Secord to help with the shipment. North also called Duane Clarridge at the CIA to get a CIA proprietary to fly the equipment. When Secord saw the shipment in Israel, he told North the cargo was 18 or 19 HAWK missiles. The implication in North's statements—that he was unaware until informed by Secord that the flight was to contain HAWK missiles—was false. As North subsequently admitted in his public hearing testimony, he knew the nature of the cargo from his first involvement in the November shipment.[107]

North also claimed, falsely, that Poindexter knew nothing of the November 1985 HAWK shipment. North stated, again falsely, that when he discovered from Secord that there were HAWKs on the plane he notified someone at the CIA, possibly Casey.[108]

While lying to the Attorney General about other aspects of the November 1985 HAWK shipment, North admitted that his statements about that shipment in the NSC chronology and at the November 20, 1986, meeting to review Casey's draft testimony were false. As discussed above, North had claimed in the chronology and at the meeting that the United States had to force the Iranians to return the HAWK missiles. In his interview with the Attorney General, North admitted that it was the Iranians who were dissatisfied and demanded their money back.[109]

Attorney General Meese then asked North to describe the money flow. Again, North lied. North said the money passed from the Iranians to the Israelis who in turn paid into a CIA account which reimbursed the Army for the weapons. North made no mention of Secord or the Lake Resources account through which the money had actually passed.[110]

Then the Attorney General showed North the diversion memorandum. The first page referred to U.S. acquiescence in the August 1985 TOW shipment. Meese asked North to explain if this was an armsfor-hostages deal. North asserted that, although he discussed the strategic opening of Iran with President Reagan, with the President "it always came back to the hostages." North said the President was drawn to the linkage between arms and hostages and it was a terrible mistake to say the President wanted the strategic relationship with Iran, because the President wanted the hostages.[111]

After that exchange, the Attorney General turned to the diversion. He directed North's attention to the section of the memorandum describing how the "residuals" would go to the Nicaraguan Resistance. North appeared to be "visibly surprised." He asked if they had found a "cover memo." Reynolds said that none had been found—without first questioning North as to whether he recalled a cover memo, or to whom it had been directed, or what it said. After Reynolds informed North that no cover memo had been found, the Attorney General asked North if they should have found a cover memo, and North said "no." [112]

The Attorney General asked North if he had discussed the diversion with the President. North replied that Poindexter was the point of contact with the President.[113]

Attorney General Meese pointed out that if the President had approved the diversion, North probably would have a record of it. North agreed and said he did not think it was approved by the President. The Attorney General asked whether other files might contain a document indicating Presidential approval, and North said he would check.[114]

The Attorney General asked North if there was anything more. North said that only the February 1986 shipment and the second shipment had produced residuals to the Contras. North also said that only three people in the Government knew of the diversion—Poindexter, McFarlane, and himself. North said the CIA did not handle the "residuals" and, though some in the CIA may have suspected a diversion, he did not think anyone at the CIA knew.[115] If North's testimony at the public hearings was truthful, then these statements, too, were lies. At the hearings, North testified that Casey knew, approved, and was enthusiastic about the diversion as early as February 1986.

And of course, North was aware when he spoke to the Attorney General that Earl knew of the diversion.*

North claimed that the diversion was an Israeli idea, probably Nir's—another lie refuted by documentary evidence.[116] He said the money went straight from the Israelis into three Swiss bank accounts opened by FDN leader Calero.[117] In fact, the diverted funds were deposited to the Swiss account maintained by Secord and Hakim. North claimed that the October 1986 shipment of TOWs did not produce residual funds because North, over Nir's objection, charged much less for the weapons. He did this, he said, because the Contras had $100 million in U.S. aid and North did not want to create the impression of private profit.[118]

The Attorney General asked North if there were any other items he had not told them about and North responded negatively. However, North volunteered that if the diversion were kept quiet, the only other problem would be the November 1985 HAWK shipment, which someone ought to say was authorized. The Justice Department officials made no reply.[119]

Attorney General Meese then confirmed to North that he had to share this information with the President and determine if he was aware of it. Meese again asked North about other problem areas, including complaints from people who financed the deals and lost money. North responded only that Ghorbanifar had lost money in a "sting." [120]

At this point in the interview, the Attorney General left to pick up his wife at the airport.[121] Cooper continued further questioning North regarding authority for the 1985 shipments. Cooper asked North if he believed at the time that the November shipment contained oil drilling equipment. North replied that he really thought it was munitions, but boasted that he could nevertheless pass a lie detector test on whether he thought it was oil drilling equipment.[122]

North also volunteered that Southern Air Transport (SAT) hauled the 1986 arms shipments and that SAT was being investigated by the Justice Department for its involvement in the Contra resupply operation.[123]

The North interview concluded at 5:55 p.m. as the Attorney General was returning. North was not told what would happen next.[124] Although the Justice Department officials noticed North's surprise that they had a copy of the diversion memorandum North had written, no one asked North if he had shredded or otherwise disposed of documents, nor did the Justice Department officials take any steps to secure North's remaining documents.

Later that night, Sofaer called Cooper to find out the status of the investigation. Cooper asked the basis of Sofaer's earlier concern about the possibility of surplus funds being generated from the Iran arms sales. Sofaer explained that he thought there may have been a difference between the purchase price and cost price. Sofaer also volunteered that he suspected that SAT may have been given excess profits from the Iran arms sales to finance the Contra resupply operation. Cooper did not mention the diversion memorandum or North's interview.[125]

That evening, North called McFarlane and Poindexter.[126] Afterwards, North shredded additional documents at his office until at least 4:30 a.m., when a security guard noticed that North's office had not been secured for the day. North responded to the officer's security report by claiming that when the officer checked the office, North was in the bathroom.[127]

November 24: Informing the President

Early Monday morning, November 24, McGinnis called George Jameson of the CIA to ask certain limited questions, and Cooper researched possible criminal violations. Attorney General Meese planned to meet with the President, the Vice President, McFarlane, Poindexter, and Regan.[128]

McGinnis continued to speak that morning with CIA personnel about the money flow. During one of his conversations, he was told of a rumor at CIA that the surplus funds had been diverted to the Contras.[129] McGinnis told Cooper of this rumor. Cooper then told McGinnis about the diversion memorandum and the North interview.[130]

Cooper went to the State Department Monday morning to obtain Hill's notes relating to the November 1985 HAWK shipment. At first Hill was reluctant to surrender them. He agreed, however, only when Sofaer told him they were needed for a criminal investigation.[131]

The Attorney General called the head of the Justice Department's Criminal Division, William Weld, at 9:55 a.m. On the previous Friday in an early morning staff meeting attended by Reynolds and Cooper among others, Weld had urged that the Criminal Division should be involved in the weekend inquiry. He had argued, for example, that the Criminal Division

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*North Test., *Hearings*, 100-7, Part I. 7/8/87, at 139-40. Indeed, North had told Earl during the spring of 1986 that Casey knew of the diversion. Earl Dep., 5/2/87, at 37.

had already made representations to a court denying any U.S. Government involvement in arms sales to Iran, and that the Criminal Division should know the facts.* Attorney General Meese told Weld during their Monday morning call that the Criminal Division was being left out of the Iran investigation on purpose and not as a result of negligence. Weld inferred that the Attorney General had been informed that Weld had argued for Criminal Division involvement. Weld told Meese that he had registered a concern at the Friday meeting about Meese's personal involvement in the investigation, warning: "If you tried to carry too much water here some might spill on you." [132]

Early Monday morning, Attorney General Meese called McFarlane to arrange a second interview.** They met alone at the Justice Department and no one took notes.[133] Meese asked if McFarlane knew about the diversion. McFarlane responded that he learned of it from North during the Tehran mission in May 1986. McFarlane told Attorney General Meese that North claimed to have approval for the diversion.

McFarlane testified that the only other question Attorney General Meese asked was whether he had told anyone else about the diversion. Meese, however, could not recall asking that.[134] Meese never asked McFarlane if the President had approved the diversion, nor did he show McFarlane the diversion memorandum. Meese did not ask McFarlane why he had not told him about the diversion during their Friday interview. McFarlane did not mention that he had spoken to Poindexter and North after North's interview with the Attorney General.[135]

Attorney General Meese went to the White House at 11:00 a.m. to meet with the President and Regan pursuant to an appointment he had made earlier that morning. Meese testified that he told the President that his team had found a memorandum at the NSC which included plans to divert excess funds from the Iran arms sales to the Contras. Attorney General Meese also said that North and McFarlane had confirmed this diversion. The President, Meese said, was very surprised. Meese told the President there was more factfinding to do before he could give him a full report at the National Security Planning Group (NSPG) meeting.[136]

Regan had a different recollection of the morning events. Regan testified that Attorney General Meese told him about the diversion prior to meeting with the President. Regan described his own reaction to news of the diversion as "horror, horror, sheer horror." [137] According to Regan, Attorney General Meese told him that North had done the diversion, and Regan said the President needed to be immediately informed. Attorney General Meese said he did not want to tell the President until he could nail down some other things. They went to see the President, but told him only that the factfinding inquiry had uncovered some serious problems and that they would need to meet later that afternoon. They set a meeting for 4:15 p.m.[138]

No one took notes of the Attorney General's morning meeting with the President. Regan recalled that Meese had papers with him from which he seemed to be reading. However, according to Regan, Attorney General Meese never told him there actually was a memorandum spelling out the diversion. Regan testified that Meese "kept using the phrase, 'I have got a few last-minute things to button up before I can give you the details.' " [139]

Attorney General Meese returned to the White House for the 2:00 p.m. NSPG meeting. Richardson's notes indicate that prior to that, the Attorney General met briefly with the Vice President at 1:40 p.m.[140] Attorney General Meese, however, testified that this meeting occurred after 4:00 p.m.[141] Continuing the pattern, Meese met with the Vice President alone and no notes were taken. Meese reported that the Vice President was unaware of the diversion.[142]

Back at the Department of Justice, Reynolds and Cooper had arranged to meet at 2:00 p.m. with attorney Tom Green.[143] Green and Reynolds had a longstanding professional relationship, so Green approached Reynolds for a meeting.[144]

Reynolds and Cooper both understood that Green had spoken to North after North's Sunday interview with the Attorney General.* Yet Green's version of the events differed sharply from what North had told them. First, Green said the idea to divert funds to the Contras originated with Albert Hakim, while North had tagged Amiram Nir with originating the plan. Green claimed there were no illegalities because the diverted money did not belong to the United States. Green urged that the facts not be made public because it would risk the lives of contacts in Iran as well as the hostages.[145]

Green also recounted other facts which differed from what North had said the day before. In contrast to North's version of the money flow, Green explained that the diversion was accomplished by routing the money through Hakim's financial network. Green said that Hakim told the Iranians that in order to foster good relations, the Iranians should make a contribution for the use of the Contras or of the United States. Green also claimed North felt he was doing the "Lord's work." [146]

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*Weld Dep., 7/16/87, at 13-14. Cooper and Reynolds each testified that he had no recollection of such a conversation. Cooper Dep., 6/22/87, at 123; Reynolds Dep., 8/27/87, at 31-32. However, Richardson not only recalled the Weld statement, but took notes. Richardson Dep., 7/22/87, at 24-28; Ex. EM-39.

**McFarlane Test., *Hearings*, 100-2, 5/11/87, at 65. McFarlane spoke to Poindexter prior to his meeting with the Attorney General. Right after speaking to McFarlane, Poindexter spoke to North on a secure telephone. See Poindexter logs.

*Cooper Test., *Hearings*, 100-6, 6/25/87, at 279-82. Ex. CJC-19; Reynolds Dep., 9/1/87, at 37. At first, Cooper had the impression that Green represented both North and Secord, but later Green stated he was not the legal representative of either of them for purposes of that meeting. Cooper Test., *Hearings*, 100-6, 6/25/87, at 279-82. Eventually, Cooper decided that if Green represented anyone, it was Albert Hakim, because Green referred to a longstanding business relationship with Hakim. *Id.*; CJC-19. It was Reynolds' impression, however, that Green did not represent any particular individual during the meeting. Reynolds Dep., 9/1/87, at 37.

Sometime on Monday, Reynolds told Meese what Green had said about the diversion.[147] Attorney General Meese, however, testified that he recalled no mention of the fact that money went through Hakim's financial network and concluded from what Reynolds told him that Green "added nothing particularly new . . . ." [148]

At the White House, the NSPG met from 2:00 p.m. to 3:45 p.m. Present were the President, the Vice President, Poindexter, Casey, Attorney General Meese, Secretary Weinberger, Secretary Shultz, Regan and George Cave. Although the sole topic at the meeting was the Iran initiative, neither Attorney General Meese nor Regan mentioned the diversion, nor did either ask any one present about it.[149] Meese's notes of the meeting indicate that at one point Regan asked about the November 1985 HAWK shipment, and specifically, who had authorized it, who knew of it, and whether the President was told of it. Poindexter implied that McFarlane had handled the Iran initiative by himself from July to December 1985. Poindexter told the group that there was "no documentation" of the shipment.[150]

After the NSPG meeting, Attorney General Meese met with Poindexter from 4:15 p.m. to 4:20 p.m. to find out what he knew of the diversion. Although North had told the Attorney General that Poindexter was the point of contact with the President, the Attorney General chose to meet alone with him and to take no notes.[151]

Poindexter told Attorney General Meese that North had given him only enough hints about the diversion to know what was going on, but that he had not inquired further. Poindexter testified that the Attorney General never asked him if the President knew of the diversion.[152] Although Meese testified at his deposition that he thought he had asked that question, he stated at the public hearings that he had not asked so direct a question, but only whether anyone else in the White House knew.[153] Poindexter testified that he did not tell the Attorney General he actually approved the diversion, because he wanted the President and his staff to retain deniability.[154]

Poindexter told the Attorney General that he knew that when the diversion became public he would have to resign, and would defer to the Attorney General's judgment on the timing of his resignation.[155] Attorney General Meese asked no further questions because he needed to meet with the President at 4:30 p.m. as scheduled.[156] The Attorney General, however, never went back to Poindexter to obtain additional details after meeting with the President.

Attorney General Meese met alone with the President and Regan. According to Meese, he told the President that Poindexter had confirmed the fact of the diversion.[157] According to Regan, Meese was informing the President for the first time of the diversion of funds from the arms sales into Swiss bank accounts controlled by the Contras.[158] Regan said the President appeared crestfallen. The Attorney General told the President that the person primarily responsible was North, but that Poindexter had some inkling of the diversion and let it happen.[159]

According to Regan, the conversation then turned to making the information public. Regan suggested they establish a commission to investigate the facts as soon as possible. Regan also suggested that the President announce the situation at the press conference and turn questions over to Meese.[160] The President said they should think about the matter overnight and decide how it should be handled.[161]

Attorney General Meese testified that they discussed the possibility of Poindexter's resignation that afternoon with the President, and later Meese and Regan met separately.[162] Regan said he stayed behind with the President after Meese left and discussed the possibility of Poindexter's resignation. Regan told the President that they would have to take steps to "clean up the mess," including asking Poindexter to resign. The President was silent, according to Regan, because he "never comments on something of that nature." By virtue of the President's silence, Regan inferred that the President had consented to his soliciting Poindexter's resignation.[163]

During the late afternoon, a meeting took place at the CIA between Roy Furmark and Casey.[164] Furmark described to Casey in detail the financing arrangement of the arms sales. Casey produced for Furmark the CIA bank account information which demonstrated the flow of funds in and out of the CIA accounts. Casey had questions about Lake Resources because he had concluded there was only $30,000 left in the account. Casey called North, in Furmark's presence, and asked North who actually owed Saudi financier Khashoggi the money he claimed to have lost in financing the arms sales. North told Casey that the Israelis and Iranians owed Khashoggi the money.[165]

Casey then called Cooper and asked him if he ever heard of "Lakeside Resources." Cooper responded that it sounded vaguely familiar but could not recall specific reference to it in their inquiry.[166]

After Meese left the White House, Regan returned a call he had received earlier that day from Casey. Casey told Regan he wanted to see him and suggested he stop at Casey's office on his way home. There they met for 20–25 minutes. No one else was present, and neither Casey nor Regan took notes. Regan told Casey that the Attorney General had informed the President that arms sales profits had been diverted to the Contras. Regan said the White House would announce it publicly the next day and he asked Casey to keep it quiet until then. Casey did not express surprise at news of the diversion, but he warned Regan of the potential consequences of going public, such as the cutoff of Congressional funding for the Contras. Casey also said that contacts with Iran would be severed when the Iranians realized they had been overcharged and the profits diverted. Finally, Casey expressed concern about the reaction in the Middle East if the Israeli role were revealed.[167]

November 25: The Public Learns of the Diversion

By Tuesday morning, November 25, the Attorney General's investigation was largely over. What had started as an effort to resolve differing testimony over the November 1985 HAWK shipment had led to the discovery of an illicit connection between the Iran initiative and the secret Contra support activities. Evidence had been destroyed; false statements had been made; important questions had been skirted or avoided. Nevertheless, the secret of the diversion had been uncovered. On this day, the American people would find out.

Attorney General Meese's day began with a 6:30 a.m. call from Casey, whom the Attorney General had not yet interviewed about the diversion. Casey told the Attorney General that Regan had advised him of the diversion, and asked Meese to drive by his house on the way to work.[168] The Attorney General arrived at 6:45 a.m., with Richardson in the car. Richardson did not go into Casey's house. Richardson testified that he never sat in on meetings between Casey and the Attorney General.[169] Meese once again held a crucial meeting without witnesses or notes.

Attorney General Meese testified that, at this meeting, Casey was adamant that the diversion needed to be publicly announced as quickly as possible.[170] This description of Casey's position is substantially different from Casey's position the day before when he met with Regan.[171]

While the Attorney General was at Casey's house, Regan called to speak to him. Regan told the Attorney General he wanted to meet with Poindexter at 8:00 a.m. to accept Poindexter's resignation.[172]

Meese returned to his car and called Poindexter, who was just arriving at the White House. He asked Poindexter to meet him at the Department of Justice, where they spoke privately for 15 minutes before Poindexter met with Regan. The Attorney General told Poindexter the time had come to submit his resignation. Poindexter agreed to resign. They then discussed North's transfer back to the Marine Corps. Attorney General Meese told Poindexter he did not think North had done anything illegal.[173]

Poindexter returned to the White House and was eating breakfast in his office when Regan came in and told him to have his resignation ready for the regular 9:30 a.m. meeting with the President. Regan then asked Poindexter how the diversion could have happened. Poindexter replied he had thought something was going on with North. Regan asked why he never looked into it; Poindexter replied, according to Regan:

> I knew it would hurt the Contras, and the way those guys on the Hill are jerking around, . . . I was afraid it would hurt them too much, so I didn't look into it.[174]

In Poindexter's testimony, however, he did not recall Regan asking him about the diversion.[175] Both Regan and Poindexter agree that Regan never asked Poindexter whether the President knew.[176]

Attorney General Meese met briefly with Cooper and Richardson.[177] He told Cooper that Poindexter was going to resign, and instructed Cooper to meet with White House Counsel Wallison to draft the President's statement. He asked Richardson to have Thompson check the White House files to verify that no documents mentioning the diversion had actually reached the President.[178]

Richardson asked Thompson to do a file search of all relevant documents that went to the President, and the public announcement was delayed pending its completion. Thompson returned with some documents Richardson had not seen before. Richardson reviewed the documents provided by Thompson from his own and Poindexter's files, including memos regarding the arms shipments and the original January 6 and 17 Findings. Thompson did not explain why he had not presented those documents during the initial document review the previous Saturday. No PROF notes were included. Richardson found nothing pertinent to his inquiry.[179]

At 9:30 a.m., the Vice President, Regan, Meese, and Poindexter met with the President. Poindexter told the President that he was aware of the plan to divert funds to the Contras, and he tendered his resignation in order to give the President "the necessary latitude to do whatever you need to do." [180] The President told Poindexter that it was in the tradition of a Naval officer to take responsibility. Poindexter then shook hands with those present and left. Poindexter testified that he did not tell the President that he had actually approved the diversion, because matters were in flux and he wanted more time to think about it.[181]

After Poindexter left the meeting, those remaining discussed North's fate. It was agreed that North should be immediately reassigned to the Marine Corps. A resignation was not necessary because North was not a Presidential appointee. No one informed North that he would be reassigned. He learned of it for the first time while watching the

President's statement and Meese's press conference on television at noon that day.[182]

Sometime that morning Poindexter called North and, according to North's notes, discussed the disclosure of the Contra connection. North's notes contain a reference to "put it off on Ghorbanifar." [183]

At 10:15 a.m. the President met with the National Security Council to brief them on developments.[184] From 11:00 a.m. to noon, the President, Regan, Secretary Shultz, Attorney General Meese, and Casey briefed Congressional leaders. Attorney General Meese began by telling them about the diversion. Meese said North was involved with possibly one or two other NSC staff or consultants. The President said that this was the only incident of this kind and that Poindexter, although not a participant, had known of it and had therefore resigned.[185]

House Majority Leader Jim Wright then asked if the diversion was done with knowledge or approval of anyone in the U.S. Government. Attorney General Meese answered that North had approved it. Representative Wright asked about Poindexter, and Meese responded that Poindexter knew the money was going to the Contras but did not know the details. Senate Minority Leader Robert Byrd then asked if Poindexter's resignation was requested. The President responded that Poindexter volunteered to resign, in the Navy tradition.[186]

Senator Nunn expressed concern about NSC staff involvement in covert operations. The President replied that the NSC staff had served the country well, citing the opening to China as an example. Senator Nunn replied that he drew a distinction between a diplomatic initiative and a covert operation.[187]

Representative Wright then asked if the CIA knew of the diversion. Casey responded, "No, I didn't." Casey then volunteered that McFarlane learned of the diversion in April or May 1986.[188]

Representative Wright noted that it strained credulity that the Israelis thought up the diversion on their own. Meese explained that there was no question that North or others set it up. Senate Majority Leader Robert Dole then asked how it was determined there was an overcharge for the arms sold. Meese replied that the United States got "dollar-for-dollar" for its weapons and equipment. He related, however, that the exact amount of the diversion was not clear.[189]

Just before the President's announcement, Richard Secord received word from North's office that Poindexter and North were resigning. Secord called Poindexter and urged him not to quit but to "stand in there and fight" to get it all straightened out. Poindexter told Secord it was too late because he had already resigned. Secord demanded to speak to the President but Poindexter told him it was too late, "they had already built a wall around the President." [190]

November 25, 1986: The Attorney General's Press Conference

The Presidential statement and subsequent press conference by the Attorney General began at noon and lasted approximately 45 minutes. Attorney General Meese began the press conference with a disclaimer of sorts, stating that the inquiry was not yet complete because "all information was not yet in." Nonetheless, his responses contained several purported conclusions.

Meese was asked how the diversion came to his attention. He responded that, through a review of reports and other materials, there was a hint that some money was available to be used for another purpose. He elaborated that the diversion had accounted for some $12 million to $30 million. Meese was asked if the CIA knew of the diversion. He responded that none of the statutory members of the National Security Council knew, including Casey.[191]

Later, in describing the money flow, Meese said the money went directly from the Israelis into bank accounts held by the Contras. This version of events, although consistent with North's statements, was contradicted by the diversion memorandum, which described how the money would be transferred by the Israelis into an account maintained by "a private United States corporation" and then transferred to the Contras.[192]

Meese was asked about arms shipments prior to the January 1986 Finding. He responded that there was one transaction in which Israel shipped weapons without authorization from the United States, and that the weapons so shipped were returned to Israel. Attorney General Meese added that the AugustSeptember and November 1985 shipments were between Israel and Iran and "did not involve, at that time, the United States." [193]

Attorney General Meese specifically stated that the President had not known about the November 1985 HAWK shipment until February 1986. Thus the Attorney General said: The President was informed generally that there had been an Israeli shipment of weapons to Iran sometime during the late summer, early fall of 1985, and then he later learned in February of 1986 details about another shipment that had taken place in November of 1985, which had actually been returned to Israel in February of 1986.[194]

These statements were contrary to what he and Cooper had learned regarding CIA participation in the November 1985 HAWK shipment and regarding McFarlane's conversation with Shultz on November 18, 1985. Attorney General Meese's statements were also contrary to the information Meese had received from Secretary Shultz on November 22 that the President had told Shultz 3 days earlier that he (the President) had known of the November 1985 HAWK shipment at the time.[195] Attorney General Meese did not tell these facts to the press.*

When asked whether the diverted funds were owed to the United States, Meese responded that all money owed to the United States had been paid to the United States. Meese said, "We have no control over that money. It was never United States funds, it was never property of the United States officials, so we have no control over that whatsoever." [196] Meese later testified that a good case could be made that such funds were held in "constructive trust" for the United States, that is, that all profits reaped belong in the U.S. Treasury.[197]

Attorney General Meese also stated at the press conference that, to the best of his knowledge, no American was present for, or participated in, negotiating the price of the arms to Iran. Meese's source for this statement is also unclear.[198]

FBI Director William Webster watched the Attorney General's press conference on television, and thereby learned of the diversion. After the press conference, Webster walked across the street to the Department of Justice and told Meese that a criminal investigation was warranted. The Attorney General stated that he had turned the inquiry over to the Criminal Division to determine which, if any, statutes were violated.[199] Webster then raised the problem of securing NSC records. Attorney General Meese assured Webster that the Justice Department would take the appropriate steps to secure the records. Webster went back to the FBI and told his Assistant Director to gear up for the anticipated investigation.[200]

At approximately 2:00 p.m., Meese met with Burns, Reynolds, Cooper, Richardson, and Kenneth Cribb (Counselor to the Attorney General). Associate Attorney General Trott joined them midway through the meeting.[201] The group discussed possible violations of laws, including the Boland Amendment, the Arms Export Control Act, and the Neutrality Act, and possible misappropriation of U. S. funds.[202] They also discussed involving the Internal Security Section of the Criminal Division in the investigation. They discussed the possibility of granting immunity, although neither North nor Poindexter had refused to talk to the Attorney General. The Attorney General instructed Deputy Attorney General Burns to call Wallison to ensure that documents belonging to North and Poindexter were secured.[203] They agreed to meet again at 5:45 p.m.

When they actually did meet, at 6:40 p.m., Meese asked Burns if he had secured the White House documents. Burns indicated he had not done so and left the room to make the call.[204] As it turned out, Burns did not get through to Wallison until the next afternoon, November 26. Wallison told him the documents had in fact already been secured by the NSC security officer.[205] A letter requesting segregation of the documents was not sent until November 28, 1986, 6 days after discovery of the diversion memorandum.[206]

Sometime that afternoon, Secord, after being besieged by the press at his office, went to a hotel to consult with Tom Green. North joined them. North received two phone calls at the hotel. One was from the Vice President calling to express his regrets about North's dismissal. The other was from the President. North stood at attention while the President spoke to him.[207] There is some dispute about the substance of this conversation. North testified that the President told him, "I just didn't know," which North understood to be a reference to the diversion.[208] Earl testified that, when North returned to the office, North had told him that the President had called and said, "It is important that I not know." [209] North testified that perhaps he told Earl that the President felt it was important that North know that he, the President, did not know of the diversion.[210] Craig Coy, who was present when North related the Presidential conversation to Earl, testified that he did not recall North saying anything about the President's statements concerning his knowledge.[211] Hall testified that North told her that President had said, "I just didn't know." [212]

There is no dispute, however, that during the phone call the President told North that he was "a national hero." [213] Indeed, the President has publicly acknowledged making this statement.[214]

At 4:40 p.m., Meese was called by Israeli Prime Minister Peres. The Prime Minister told Meese that the Government of Israel was concerned about Meese's claims in his press conference and was about to issue a statement. Prime Minister Peres said the Israelis had transferred "defensive arms" at the request of the United States. He also told Meese that the Israelis had not paid anything to any Contra account. The Prime Minister explained that the Iranians paid directly into an account in Switzerland maintained by an American company. He indicated that Israel—which had been asked by U.S. officials early on to take the rap if the arms sales became public—was not going to take the blame for the diversion.[215]

Amiram Nir made the same point in a call to North. North's notes of that call show that Nir complained about Meese's statements and asked what basis Meese had for making them. Nir pointed out that, far from ever telling him that any funds were diverted, North had always told him there was a shortage of funds. Indeed, Nir questioned why the Israelis had been made to pay for replacement weapons if there was an excess of funds. Nir told North he could not back his story. He said that statements made by the Attorney General regarding Israeli deposits to Contra accounts and other matters were simply false.[216]

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*Ex. EM-54. Meese was asked at the hearings whether he believed that Secretary Shultz should resign for not supporting the Iran initiative. Meese stated, "any member of the Administration owes it to the President to stand shoulder-to-shoulder with him and support the policies he has . . . and I intend to do that. Other people speak for themselves."

At the time of these events on November 25, McFarlane was in London for a speaking engagement. He heard a news account of the Attorney General's press conference and, after finishing his speech, called North. North told McFarlane he had met with the Attorney General and Regan, and, based on that meeting, he assumed he would be allowed to resign. North said he learned from watching the press conference on television that he had been "dismissed." [217] McFarlane had written a statement for the press that he read first to North. The statement said that he had been led to believe the diversion had been approved. North confirmed to McFarlane that the diversion had been approved.[218]

During the afternoon of November 25, the NSC staff secured North's office. In reviewing her files at the time, Fawn Hall discovered that she had not substituted the copies of the documents she had altered on November 21 for the copies of unaltered versions of the documents in North's files. She also found PROF notes that were similar to those shredded Friday night, along with minutes of the Tehran meeting in May 1986 that she had saved to read. Hall knew that the NSC security staff soon would be closing the office, so she called North and told him to come back to the office, indicating to him the urgency of her request and signalling that it involved a problem with documents. North said that he and his attorney would come back to the office.[219]

Before they arrived, Hall took the documents upstairs and placed copies of the altered documents inside her boots, inexplicably leaving the originals of the altered versions on her desk. She then went to Earl's office and solicited his help in pulling the PROF notes from he pile of remaining documents. Earl was going to put the PROF notes in his jacket, but Hall told him she would do it. She then told him to watch the open entrance to his office while she hid the PROF notes under her clothes. Earl assured her that the documents were not visible.[220]

North and his attorney then arrived at North's office, where North took a phone call in his private office with only Hall present. Hall asked North if he could detect anything against her back, and he said he could not. Hall left the office with North and the attorney. Their briefcases were inspected by the NSC security staff, and they were allowed to pass. In the hallway, Hall indicated to North that she wanted to give him the documents. He told her to wait until they were outside.[221]

Hall, North, and the attorney walked outside. Hall made a motion to North (she was planning to pass the documents), but the attorney said, according to Hall, "No, wait until we get inside the car." Once in the car, Hall pulled out the documents, gave them to North, and told North that she had not finished substituting the altered documents for the originals. The attorney drove them to their cars and, according to Hall, asked her what she would say if asked about the shredding. Hall replied that she would say "We shred every day," to which the attorney said, "Good." [222]

There is no evidence as to whether the attorney knew in advance that Hall had documents on her person. That evening, the attorney withdrew from North's representation.[223] Subsequently, North's new attorney returned documents to the NSC.

November 26: Criminal Investigation Underway

By Wednesday morning, November 26, Meese was prepared for the investigation to enter a new phase. At 9:15 a.m., he met with Justice Department attorneys Burns, Trott, Reynolds, Cooper, Bolton, Cribb, Korten, Weld, and Richardson. The Attorney General began the meeting by announcing to Weld that this was the day for the handoff of the investigation to the Criminal Division. Weld said he wanted to assign the investigation to two experienced attorneys in the Public Integrity Section, which typically handles prosecutions of public officials and Independent Counsel inquiries.[224] Attorney General Meese stated he also wanted Deputies Mark Richard and John Keeny to participate.

Attorney General Meese then assigned Cooper as an additional member of the prosecution team. Attorney General Meese explained that he wanted to be kept informed. Richardson instructed the group that if anything came up that was "hot," they were to tell the Attorney General immediately.[225] However, the Attorney General testified before the Tower Board that he did not request briefings because he felt this case should be referred to an Independent Counsel.[226] Attorney General Meese also testified, to the Senate Select Committee on Intelligence, that he suggested from the start that an Independent Counsel be appointed.[227] Yet the relevant Justice Department officials do not recall when the Attorney General took that position.[228] In fact, there was much discussion of appointing a "special counsel," who, unlike an Independent Counsel, would have been under the control of the Attorney General.[229]

At approximately 11:00 a.m., Meese spoke with Webster and requested that the FBI enter the case. At 2:45 p.m., the Attorney General called a meeting at the Justice Department, that included representatives of the Criminal Division and the FBI. The Attorney General described the weekend inquiry and answered questions. The Attorney General also designated the criminal investigation team members.[230]

November 27: A Thanksgiving Phone Call

November 27 was Thanksgiving. Fawn Hall received a telephone call at home from Jay Stephens, an attorney on the White House Counsel's staff.[231] Press reports had appeared claiming that documents pertinent to the Iran-Contra Affair had been shredded at the NSC. Stephens asked Hall whether those reports were true. Hall told Stephens exactly what she had earlier told North's attorney her response would be to such a question: "we shred everyday." Hall admitted during the public hearings that she misled Stephens to believe that nothing unusual had occurred.[232]

Final Steps

The NSC security officer had secured North's office on Novmeber 25. The FBI took over joint custody of the documents at the NSC on Friday, November 28.[233]*

Also on November 28, Hall went to the office of North's new attorney to deliver messages that North had received.[234] When Hall returned to the NSC, Craig Coy introduced her to FBI agents, who asked to interview her over the weekend. Hall left her new office that evening with NSC aide Robert Earl, and they agreed not to tell the FBI about the removal of documents from the NSC offices. The next day, after learning that Earl had retained an attorney, Hall arranged for one as well.[235]

On Monday, December 1, William Reynolds had plans to meet alone with Tom Green again. When Weld and Richard heard of this, they opposed the meeting because Reynolds was no longer supposed to be involved in the investigation. They also pointed out that Reynolds might be a fact witness and should therefore not be negotiating with defense counsel. Weld called Reynolds to express his opposition, but Reynolds insisted on meeting with Green. He did, however, agree to have William Hendricks (Deputy Chief of the Public Integrity Section of the Justice Department) present. Weld consulted with Trott, who said that so long as Hendricks was present, the situation should be "survivable." **

During the meeting, Green said he knew 93 percent of the story and did not feel the President would be embarrassed if the whole truth came out. Green made clear now that he represented Secord. Green said that Secord preferred to tell his story to the Justice Department rather than to Congress.[236]

Green wanted immunity for Secord. He argued that if the Justice Department did not grant immunity and Secord's story did not come out, the press would feed on the situation and create the suspicion that the President and Regan knew more than they claimed they did.[237]

Reynolds and Hendricks asked Green about the 1985 arms shipments. Green responded that the President authorized the first shipment and that McFarlane probably authorized the second shipment. Turning to the January 1986 Finding, Green said it was broad enough to authorize the "commercial activity in this enterprise." [238]

Going back to the November 1985 shipment, Green said McFarlane did not impart to others the truth about the cargo. He said CIA "subordinates" were told the cargo was oil drilling equipment.[239] Concerning the Contra resupply operation, Green said that only unappropriated funds were used and that private individuals were used to raise and collect money to support the airlift operation.[240]

Hendricks asked Green about the possibility that the U.S. sale of arms was used as leverage against third countries to force them to send money to the Contras. Green said he knew nothing of that. Green said that the residuals to the Contras were an "unexpected result" that emerged from the arms sales, rather than being "cooked up" by the operation.[241]

Hendricks suggested that because Secord was such a "great American," he should come forward without immunity. Green rejected that idea. Hendricks responded that there were problems in granting Secord immunity, and noted the prior criminal investigation against Secord.[242]

Reynolds asked how many people Green thought should be immunized. Green said it should be limited to Secord, North, and Hakim. Green said he could secure the approval of Hakim's and North's lawyers. Green assured them that he did not want to embarrass the President and was not trying to "snooker" anyone.[243]

Hendricks noted that it would be inappropriate to immunize anyone while there was an ongoing preliminary inquiry for an Independent Counsel appointment. Green asserted that Secord, North, and Hakim were not covered under the law that grants jurisdiction to the Independent Counsel. Green predicted that if an Independent Counsel were appointed, all the princi-

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*Mark Richard had advocated serving subpoenas on the NSC staff and others. His concern was that, if documents were altered or destroyed, a prosecutor might be unable to charge obstruction of justice because the defendant could claim that he or she was not aware of any investigation and therefore did not intend to obstruct justice. Richard Dep., 8/19/87, at 176-77. Indeed, as noted earlier, during their public hearing testimony, both North and Poindexter made a point of saying they believed Meese was acting as a friend of, or counselor to, the President, as opposed to acting as Attorney General, during the factfinding inquiry. North Test., *Hearings* 100-7, Part I, 7/7/87, at 19; Poindexter Test., *Hearings*, 100-8, 7/16/87, at 133.

**Weld Dep., 7/16/87, at 40. Reynolds, however, maintains that he never intended to meet with Green alone and that it was he who insisted that someone from the Criminal Division be present. Reynolds Dep., 9/1/87, at 67.

pals would "clam up." Green noted that time was of the essence. The meeting ended at 12:15 p.m.[244]

At 2:20 p.m., Meese met with Burns, Cooper, Bolton, Cribb, Weld, Hendricks, and Richard to discuss the investigation. This meeting focused on whether to apply for an Independent Counsel. There was concern that North and Poindexter might not be persons covered by the Independent Counsel statute. The consensus, however, was that sufficient evidence of a conflict of interest existed that the Justice Department should apply for an Independent Counsel. Weld took it upon himself to draft the application that night. Weld mentioned only North in the application as a possible target because he felt there were insufficient facts to name others.[245]

On December 19, an Independent Counsel was appointed.

Chapter 20

1. Ex. EM-43.
2. Cooper Test., *Hearings,* 100-6, 6/25/87, at 250-52; Meese Test., *Hearings,* 100-9, 7/28/87, at 200-01.
3. Poindexter telephone logs.
4. Regan Test., *Hearings,* 100-9, 7/30/87, at 224; Regan Dep., 7/15/87, at 44.
5. Ledeen Dep., 6/19/87, at 19.
6. McFarlane Test., *Hearings,* 100-2, 5/11/87, at 176-77; McFarlane Dep., 7/2/87, at 55.
7. Ledeen Dep., 6/19/87, at 19.
8. North Test., *Hearings,* 100-7, Part I, 7/9/87, at 226.
9. McFarlane Test., *Hearings,* 100-2, 5/13/87, at 213-14.
10. North Test., *Hearings,* 100-7, Part I, 7/8/87, at 146.
11. Cooper Test., *Hearings,* 100-6, 6/25/87, at 250; Cooper Dep., 6/22/87, at 130.
12. Webster Test., SSCI, 4/8/87, at 167-68; Meese Dep., 7/8/87, at 91.
13. Meese Test., *Hearings,* 100-9, 7/28/87, at 413-14; Meese Dep., at 80.
14. Meese Dep., at 91.
15. Earl Dep., 5/2/87, at 65.
16. Meese Test., *Hearings,* 100-9, 7/29/87, at 335-36; North Test., *Hearings,* 100-7, Part I, 7/8/87, at 144.
17. Earl Dep., 5/2/87, at 64.
18. Meese Test., *Hearings,* 100-9, 7/28/87, at 225-26; Meese Dep., at 88.
19. Weld Dep., 7/16/87, at 19-20.
20. Meese Test., *Hearings,* 100-9, 7/28/87, at 226; Meese Dep., at 91.
21. Ex. EM-42.
22. Earl Dep., 5/22/87, at 151-52.
23. Poindexter schedule.
24. See Chapter 6.
25. McFarlane Test., *Hearings,* 100-2, 5/11/87, at 76; Hall Test., *Hearings,* 100-5, 6/8/87, at 479-80, 491; Ex. 40 (RCM).
26. *Compare* Exs. FH-2 through FH-6 (originals) *with* Exs. FH-2A through FH-6A & FH-5B (altered).
27. Hall Test., *Hearings,* 100-5, 6/8/87, at 488-90, 496-97.
28. North Test., *Hearings,* 100-7, Part I, 7/7/87, at 15-17; Hall Test., *Hearings,* 100-5, 6/8/87, at 502-03; Earl Dep., 5/2/87, at 63-64.
29. Hall Test., *Hearings,* 100-5, 6/8/87, at 503-05.
30. North Test., *Hearings,* 100-7, Part I, 7/7/87, at 226-27; Earl Dep., 5/2/87, at 67.
31. Meese Test., *Hearings,* 100-9, 7/28/87, at 226-27; Meese Dep., at 87; Ex. JMP-18.
32. Poindexter Test., *Hearings,* 7/15/87, at 42-44, Poindexter Dep., 5/2/87, at 113.
33. Poindexter Test., *Hearings,* 100-8, 7/15/87, at 20-23.
34. Wash. Post, 7/11/87, at A13.
35. Poindexter Test., *Hearings,* 100-8, 7/16/87, at 118.
36. *Id.,* at 72.
37. North Notes, Q 2640, 11/21/86.
38. Poindexter Test., *Hearings,* 100-8, 7/16/87, at 116.
39. North Notes, Q 1354, 11/26/87.
40. Poindexter Test., *Hearings,* 100-8, 7/16/87, at 114.
41. Napier Dep., at 66-68; Corbin Dep., at 7-14; Dutton Test., *Hearings,* 5/27/87, at 129-31.
42. Napier Dep., at 60-68, 104-05.
43. Ex. CJC-15.
44. Cooper Dep., 7/1/87, at 11, 13-14.
45. McFarlane Test., *Hearings,* 100-2, 5/12/87, at 95; McFarlane Dep., 7/2/87, at 44-45.
46. McFarlane Dep., 7/2/87, at 57-58; Sofaer Dep., 6/18/87, at 62-63.
47. Meese Test., *Hearings,* 100-9, 7/28/87, at 229-30; McFarlane Test., *Hearings,* 100-2, 5/13/87, at 165.
48. McFarlane Test., *Hearings,* 100-2, 5/11/87 at 71-73, 83; McFarlane Dep., 7/2/87, at 52.
49. McFarlane Test., *Hearings,* 100-2, 5/11/87, at 71; McFarlane Dep., 7/2/87, at 52.
50. McFarlane Test., *Hearings,* 100-2, 5/11/87, at 71-72; see Meese Test., *Hearings,* 100-9, 7/28/87, at 230-31.
51. McFarlane Dep., 7/2/87, at 11, 53.
52. Ex. RCM-66.
53. Richardson Dep., 7/22/87, at 47.
54. Meese Dep., at 120.
55. Meese Test., *Hearings,* 100-9, 7/29/87, at 227.
56. Chron. of Justice Dept. Inquiry, 7/26/87.
57. Meese Dep., 7/8/87, at 104-05.
58. *Id.,* at 108-12; Meese Dep., at 106.
59. Cooper Dep., 6/22/87, at 144-45.
60. Ex. EM-54.
61. Meese Dep., at 103; North Test., *Hearings,* 100-7, Part I, 7/8/87, at 142; Meese Test., *Hearings,* 100-9, 7/29/87, at 54.
62. R. Miller Dep., 6/23/87, at 11-15.
63. Ex. CJC-1.
64. Ex. GPS-C.
65. Cooper Dep., at 149-50.
66. Shultz Test., *Hearings,* 100-9, 7/23/87, at 414-15.
67. Meese Test., *Hearings,* 100-9, 7/29/87, at 414-15.
68. *Id.,* at 286, 288.
69. *Id.,* at 414-15.
70. Sofaer Dep., 6/18/87, at 70; Cooper Test., *Hearings,* 100-6, 6/25/87, at 265.
71. Richardson Dep., 7/22/87, at 50-51.
72. Meese Test., *Hearings,* 100-9, 7/28/87, at 234; Meese Dep., 7/8/87, at 109-10.
73. Ex. CJC-18.
74. Richardson Dep., 7/22/87, at 64.
75. *Id.,* at 65-69.
76. Reynolds Dep., 8/27/87, at 68-74.
77. Ex. EM-44.
78. Reynolds Dep., 8/27/87, at 79-85; Richardson Dep., 7/22/87, at 74.
79. Reynolds Dep., 8/27/87, at 87; Richardson Dep., 7/22/87, at 81-82.
80. Meese Test., *Hearings,* 100-9, 7/28/87 at 35; Cooper Dep., 6/22/87, at 159-63.
81. Earl Dep., 5/2/87, at 79-80.
82. North Test., *Hearings,* 100-7, Part I, 7/9/87, at 183-84.
83. Reynolds Dep., 8/27/87, at 100-02; Richardson Dep., 7/22/87, at 188-91; Earl Dep., 5/2/87, at 79.
84. Poindexter Test., *Hearings,* 100-8, 7/21/87, at 70-71.
85. Richardson Dep., 7/22/87, at 88-89.
86. *Id.,* at 92-93.
87. *Id.,* at 93.
88. *Id.,* at 95; North Test., *Hearings,* 100-7, Part I, 7/7/87, at 39.
89. Reynolds Dep., 8/27/87, at 110; Ex. EM-43.

90. Meese Test., *Hearings,* 100-9, 7/28/87, at 236.
91. *Id.,* at 239-40.
92. J 9419.
93. Meese Dep., at 116.
94. *Id.,* at 122-23.
95. Meese Test., *Hearings,* 100-9, 7/28/87, at 109-16.
96. Meese Test., SSCI, 12/17/86, at 75; HPSCI, 12/19/86, at 21.
97. Meese Test., *Hearings,* 100-9, 7/28/87, at 236-39.
98. Ex. CJC-1.
99. Cooper Test., *Hearings,* 100-6, 6/25/87, at 317; Cooper Dep., 6/22/87, at 184.
100. Ex. CJC-1; Reynolds Dep., 9/1/87, at 89; Richardson Dep., 7/22/87, at 128-29.
101. North Test., *Hearings,* 100-7, Part II, 7/14/87, at 223-24; McFarlane Dep., 7/2/87, at 61-62.
102. North Test., *Hearings,* 100-7, Part II, 7/13/87, at 200-01.
103. McFarlane Dep., 7/2/87, at 64.
104. Ex. EM-47.
105. Meese Test., *Hearings,* 100-9, 7/29/87, at 240; Reynolds Dep., 9/1/87, at 26.
106. North Test., *Hearings,* 100-7, Part I, 7/8/87, at 141-43; 7/9/87, at 240-43.
107. Meese Test., *Hearings,* 100-9, 7/28/87, at 240-41; Cooper Test., *Hearings,* 100-6, 6/25/87, at 261; North Test., *Hearings,* 100-7, Part I, 7/9/87, at 240.
108. Ex. EM-47.
109. Cooper Test., *Hearings,* 100-6, 6/25/87, at 245-46; Ex. EM-43.
110. Meese Test., *Hearings,* 100-9, 7/28/87, at 244-45.
111. *Id.,* 7/29/87, at 411-12; Ex. EM-43.
112. Cooper Test., *Hearings,* 100-6, 6/25/87, at 262; Meese Test., *Hearings,* 100-9, 7/28/87, at 242-43, 248.
113. Meese Test., *Hearings,* 100-9, 7/28/87, at 245-46; Cooper Test., *Hearings,* 100-6, 6/25/87, at 262.
114. Meese Test., *Hearings,* 100-9, 7/29/87, at 246.
115. *Id.,* at 128.
116. *See* Chapter 15.
117. Meese Test., *Hearings,* 100-9, 7/28/87, at 243-45.
118. North Test., *Hearings,* 100-7, Part I, 7/8/87, at 108.
119. Meese Test., *Hearings,* 100-9, 7/28/87, at 246; Cooper Test., *Hearings,* 100-6, 6/25/87, at 264.
120. Ex. EM-47.
121. Reynolds Dep., 9/1/87, at 31.
122. Cooper Test., *Hearings,* 100-6, 6/25/87, at 261; Ex. EM-47.
123. Ex. EM-47.
124. Cooper Test., *Hearings,* 100-6, 6/25/87, at 264; Reynolds Dep., 9/1/87, at 31.
125. Sofaer Dep., 6/18/87, at 69-70.
126. Poindexter Test., *Hearings,* 100-8, 7/16/87, at 82; North Test., *Hearings,* 100-7, Part I, 7/9/87, at 151.
127. North Test., *Hearings,* 100-7, Part I, 7/9/87, at 257-58; Barbara Browne Aff. 9/4/87, at 1.
128. Cooper Test., *Hearings,* 100-6, 6/25/87, at 265-67; Cooper Dep., 6/22/87, at 210.
129. McGinnis Interview, 4/24/87; Cooper Test., *Hearings,* 100-6, 6/25/87, at 266.
130. Cooper Dep., 6/22/87, at 185; Ex. CJC-1.
131. Sofaer Dep., 6/18/87, at 71.
132. Weld Dep., 7/16/87, at 23-24.
133. Meese Test., *Hearings,* 100-9, 7/28/87, at 250; Meese Dep., at 140.
134. Meese Test., *Hearings,* 100-9, 7/28/87, at 250; McFarlane Dep., 7/2/87, at 67.
135. Meese Dep., at 141-42.
136. Meese Test., *Hearings,* 100-9, 7/28/87, at 251; Meese Dep., at 144-45.
137. Regan Test., *Hearings,* 100-10, 7/30/87, at 30.
138. *Id.,* at 29; Regan Dep., 7/15/87, at 54-55.
139. Regan Test., *Hearings,* 100-10, 7/30/87, at 29; Regan Dep., 7/15/87, at 55-57.
140. Ex. EM-43.
141. Meese Test., *Hearings,* 100-9, 7/29/87, at 139.
142. *Id.,* at 77-78; Cooper Test., *Hearings,* 100-6, 6/25/87, at 108-09; Cooper Dep., 6/23/87, at 24.
143. Ex. CJC-1.
144. Reynolds Dep., 9/1/87, at 35-37.
145. Cooper Test., *Hearings,* 100-6, 6/25/87, at 280-81; Cooper Dep., 6/23/87, at 31-33.
146. Cooper Dep., 6/23/87, at 33; Ex. CJC-19.
147. Cooper Test., *Hearings,* 100-6, 6/25/87, at 281-82.
148. Meese Dep., at 137.
149. Meese Test., *Hearings,* 100-9, 7/28/87, at 252; Meese Dep., at 149.
150. Ex. EM-49; Meese Test., *Hearings,* 100-9, 7/28/87, at 252.
151. Meese Test., *Hearings,* 100-9, 7/29/87, at 254; Meese Dep., 7/8/87, at 146.
152. Poindexter Test., *Hearings,* 100-8, 7/16/87, at 120.
153. Meese Test., *Hearings,* 100-9, 7/28/87, at 254; Meese Dep., at 147.
154. Poindexter Test., *Hearings,* 100-8, 7/16/87, at 119-20.
155. *Id.*
156. Meese Test., *Hearings,* 100-9, 7/28/87, at 253.
157. *Id.,* 7/29/87, at 234; Meese Dep., 7/8/87, at 149.
158. Regan Test., *Hearings,* 100-10, 7/30/87, at 75-76; Regan Dep., 7/15/87, at 62.
159. Regan Test., *Hearings,* 100-10, 7/30/87, at 30; Regan Dep., 7/15/87, at 62.
160. Regan Test., *Hearings,* 100-10, 7/30/87, at 30-31; Regan Dep., 7/15/87, at 64.
161. Meese Test., *Hearings,* 100-9, 7/28/76, at 255.
162. Meese Dep., at 150-51.
163. Regan Test., *Hearings,* 7/30/87, at 78-79; Regan Dep., 7/15/87, at 68-69.
164. Furmark Dep., 7/22/87, at 167.
165. *Id.,* at 168.
166. Cooper Test., *Hearings,* 100-9, 6/25/87, at 283; Cooper Dep., 6/23/87, at 37-38.
167. Regan Test., *Hearings,* 100-10, 7/30/87, at 31-32; Regan Dep., 7/15/87, at 73-75.
168. Meese, Tower Board, 1/20/87, at 41.
169. Richardson Dep., at 133-34.
170. Meese Test., *Hearings,* 100-9, 7/28/87, at 255; Meese Dep., at 154.
171. Regan Test., *Hearings,* 100-10, 7/30/87, at 31-32; Regan Dep., 7/15/87, at 74-76.
172. Meese, Tower Board, 1/20/87, at 42.
173. Poindexter Test., *Hearings,* 100-8, 7/16/87, at 88.
174. Regan Test., *Hearings,* 100-10, 7/30/87, at 43; Regan Dep., 7/15/87, at 69.
175. Poindexter Test., *Hearings,* 100-8, 7/16/87, at 120.
176. Regan Test., *Hearings,* 100-10, 7/30/87, at 86-87; Poindexter Test., *Hearings,* 100-8, 7/16/87, at 89.
177. Meese logs; Richardson Dep., 7/22/87, at 136.
178. Richardson Dep., 7/22/87, at 138.

179. *Id.*, at 138-41.
180. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 121.
181. *Id.*, at 121-23.
182. Regan Test., *Hearings*, 100-10, 7/30/87, at 34, 60; Regan Dep., 7/15/87, at 69-70; McFarlane Dep., 7/8/87, at 69; North Test., *Hearings*, Part I, 7/9/87, at 125.
183. North Notes, Q 2647.
184. Meese schedule.
185. Ex. EM-53.
186. *Id.*, at 4, 9.
187. *Id.*, at 7.
188. *Id.*, at 10.
189. *Id.*, at 17, 20.
190. Secord Test., *Hearings*, 100-1, 5/5/87, at 135.
191. Ex. EM-54.
192. Reynolds Dep., 9/1/87, at 61-62.
193. Ex. EM-54.
194. *Id.*
195. Ex. GPS-C.
196. Ex. EM-54.
197. Meese Test., *Hearings*, 100-9, 7/29/87, at 259.
198. Ex. EM-54.
199. Webster Int., 4/28/87; Webster Test., SSCI, 4/8/87, at 131.
200. Webster Int., 4/28/87.
201. Ex. EM-43.
202. Ex. EM-55.
203. Richardson Dep., 7/22/87, at 145.
204. Cooper Test., *Hearings*, 100-6, 6/25/87, at 268-69.
205. Burns Int., July 7, 1987.
206. Cooper Test., *Hearings*, 100-6, 6/25/87, at 270.
207. Secord Test., *Hearings*, 100-1, 5/5/87, at 135-36.
208. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 1.
209. Earl Dep., 5/22/87, at 145-47.
210. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 93.
211. Coy Dep., 6/1/87, at 22-26.
212. Hall Test., *Hearings*, 100-5, 6/8/87, at 506-07.
213. *Id.*, at 297.
214. Time Magazine, 12/8/86, at 18.
215. Ex. EM-56.
216. North Notes, Q 2650-51.
217. North Test., *Hearings*, 100-7, Part I, 7/9/87, at 233.
218. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 79-80, McFarlane Dep., 7/8/87, at 69.
219. Hall Test., *Hearings*, 100-5, 6/8/87, at 508-09.
220. *Id.*, at 509-10.
221. *Id.*, at 510.
222. *Id.*
223. *Id.*, at 511.
224. Weld Dep., 7/16/87, at 34-35.
225. *Id.*, at 34-35.
226. Meese, Tower Board, 1/20/87, at 49.
227. Meese Test., SSCI, 12/17/86, at 14.
228. *E.g.*, Trott Dep., 7/2/87, at 69-70; Richard Dep., 8/19/87, at 181-83.
229. Richard Dep., 8/19/87, at 182-83.
230. Weld Dep., 7/16/87, at 35.
231. Hall Test., *Hearings*, 100-5, 6/9/87, at 523.
232. *Id.*
233. Trott Dep. 7/2/87, at 62-63.
234. Hall Test., *Hearings*, 100-5, 6/8/87, at 511.
235. *Id.*, at 512-13; Earl Dep., 5/2/87, at 94.
236. Reynolds Dep., 9/1/87, at 66-72.
237. *Id.*, at 72; *Id.*, Ex. 3.
238. Reynolds Dep., 9/1/87, Ex. 3.
239. *Id.*
240. *Id*
241. Reynolds Dep., 9/1/87, at 70-71.
242. *Id.*, at 72.
243. Reynolds Dep., 9/1/87, Ex. 3.
244. *Id.*
245. Weld Dep., 7/16/87, at 42.

Part V
The Enterprise

Chapter 21

Introduction to the Enterprise

By the summer of 1986, the organization that Richard Secord ran at Lt. Col. Oliver L. North's direction controlled five aircraft, including C-123 and C-7 transports.[1] It had an airfield in one country, warehouse facilities at an airbase in another, a stockpile of guns and military equipment to drop by air to the Contras, and secure communications equipment obtained by North from the National Security Agency (NSA).[2]

Flying the planes were veteran pilots and crew, many experienced in covert operations. At any given time, about 20 airmen were paid consultants to a Panamanian corporation formed by Secord and Albert Hakim at North's direction; their salaries were paid from secret Swiss accounts controlled by Secord and Hakim.[3]

In Robert Dutton, a recently retired U.S. Air Force lieutenant colonel, the organization had an expert in special operations.[4] Dutton was reporting to an NSC official, Oliver North, and a retired Air Force general, Richard Secord, both of whom indicated that the operation was authorized by the President of the United States.[5] This private air force was but a part of the organization that Secord and Hakim called the "Enterprise."

This part of the Report explores the activities of the Enterprise and addresses questions such as: Where did the Enterprise get the money? How did it spend it? Who profited? What amount of the Iranian arms sales proceeds was spent on the Contras (the so-called "diversion")? What happened to the $10 million that Brunei contributed? What other covert operations did the Enterprise conduct or plan?

Witnesses testifying before the Committees could not easily define the Enterprise. To Hakim, Secord's partner, the Enterprise was a covert organization with a chain of command headed by North; it was also a business with a chain of Swiss accounts that he set up and partially owned.[6] Secord first described the Enterprise as the group of offshore companies that carried out the Iran and Contra operations, but later testified that it was fair to describe the Enterprise as his own covert operations organization formed at the request of North and Poindexter to carry out all of the operations described in his testimony.[7] Secord declared that he "exercised overall control" over the Enterprise, but acknowledged that he depended upon North's support.[8]

North described Secord's network of offshore companies as a private commercial organization, but he also stated that it was the starting point for the creation of an organization that would conduct activities similar to those of the Central Intelligence Agency (CIA), including counterterrorism.[9] Poindexter never defined the Enterprise, but stated that he found attractive the idea of a "private organization properly approved, using nonappropriated funds in an approved sort of way." [10]

Secord consistently turned to the same group of individuals in order to accomplish the tasks that North assigned to him. Albert Hakim, an Iranian-born American citizen, was his partner and, by agreement, Secord and Hakim were to share equally in any Enterprise profits. Hakim controlled the Enterprise's bank accounts.[11] Rafael Quintero, a Cuban exile formerly associated with the CIA, handled the logistics of arms deliveries from various locations in Central America.[12] Glenn Robinette, a former CIA officer-turned-consultant, investigated those who made accusations about operations of the Enterprise and performed other tasks, among them, installation of a security system at North's residence.[13] Thomas Clines, a former CIA official-turned-investor and consultant, served as the primary broker for the Enterprise's arms transactions.[14]

The relationships were not new. Secord had been in contact with the group throughout his career; apparently he trusted these individuals and they trusted him.[15] Secord, as an Air Force officer, and Clines, as a CIA officer, worked together in the late 1960s when both were assigned to the CIA station in Laos, and developed a close relationship.[16]

When Secord returned from Laos he was stationed at the Pentagon. Clines took the opportunity to introduce him to a number of Clines' CIA associates, including Quintero.[17] Clines also introduced Secord to Edwin Wilson, a former CIA officer who had become enormously successful in international business dealings.[18] In the mid 1970s, Secord was stationed in Iran where he exercised substantial influence over purchasing decisions of the Iranian Air Force.[19] At about this time, according to Hakim, Wilson bought, or was given, an interest in one of Hakim's companies and Wilson became "acquainted" with Hakim's "Iranian operations." [20] Hakim's Iranian operations included, among other things, an effort to sell electronic intelligence systems to the Iranian Government.[21] The operations also involved payoffs to Iranian Air Force and Army Generals through "bearer letters" and numbered Swiss accounts.[22] Hakim and Secord claimed that they first met on unfriendly terms in 1976 or 1977 when Secord recommended against a contract that Hakim proposed to the Iranian Government.[23]

After Secord returned from Iran, his relationship with Wilson became more involved.[24] In 1981, Secord and Clines became subjects of a Department of Justice conflict-of-interest and bribery investigation stemming from their relationship with Wilson. In addition, in 1982, Clines became a target of a Department of Justice investigation concerning fraudulent overbillings of the U.S. Government by the Egyptian American Transport Company (EATSCO), 49 percent of which was owned by Clines.[25]

Secord retired from the Air Force in May 1983 because the Wilson story and the ongoing Justice Department investigation had placed a cloud over his military career.[26] Two months later, EATSCO pleaded guilty to criminal and civil overbilling charges. Clines, on behalf of the corporate entity that held his 49 percent interest, paid a $10,000 criminal fine and a $100,000 civil fine as part of the settlement. In July 1984 the Justice Department closed the EATSCO case and in January 1986, it closed the conflict-of-interest and bribery investigation of Secord and Clines.[27] No indictments or other prosecutorial action followed.

Hakim kept in communication with Secord after Secord left Iran. When Hakim learned that Secord was considering retirement, he tried to recruit Secord as a partner to revive his security sales company, Expantrade. By offering security systems to foreign governments, Hakim believed that "you have a deep penetration in that government and therefore you can do a lot of business." [28]

Secord agreed with the concept and in May 1983, immediately upon his retirement, joined Hakim. Secord became Hakim's equal partner in a new company, Stanford Technology Trading Group International (STTGI), headquartered in Vienna, Virginia, outside of Washington, D.C. STTGI, relying on Secord's contacts, tried to develop contracts in the security field in Saudi Arabia and elsewhere.[29] In 1984, when North recruited Secord to help with arms supply to the Contras, Hakim and Secord found a major project that would steadily grow more complex—as the ensuing chapter shows.[30]

Chapter 21

1. Dutton Test., *Hearings,* 100-3, 5/27/87, at 212, 217, 219.

2. *Id.*, at 208-09, 212-13.

3. *Id.* at 207.

4. *Id.*, at 204-05, 206-07.

5. *Id.* at 204, 211.

6. Hakim Test., *Hearings,* 100-5, 6/3/87, at 213, 6/5/87, at 548; Hakim Dep., 5/22/87, at 114-15, 5/23/87, at 259.

7. Secord Test., *Hearings,* 100-1, 5/7/87, at 172, 200-01.

8. *Id.* at 172.

9. North Test., *Hearings,* 100-7, 7/10/87, at 314-15; *Hearings,* 100-7, 7/8/87, at 117-18.

10. Poindexter Test., *Hearings,* 100-8, 7/15/87, at 58-9.

11. Secord Test., *Hearings,* 100-1, 5/7/87, at 155 (50/50 partners in Enterprise profits); at 172 (control over bank accounts).

12. *Id.* 6/5/87, at 53.

13. Robinette Test., *Hearings,* 100-6, 6/23/87, at 3-4, 5.

14. Secord Test., *Hearings,* 100-1, 5/5/87, at 52-53.

15. Secord Test., *Hearings,* 5/6/87, at 50; *Id.*, at 172. Secord knew Robinette through Clines. Robinette testified that he had been a friend of Clines for more than 35 years. Robinette Test., *Hearings,* 100-6, 6/23/87, at 2.

16. FBI Summary of Secord Interviews, FB389-92; Clines FBI Interview, FB 407, 404-08. Clines refused to provide testimony to the Committees without a grant of limited immunity, which immunity the Committees declined to provide. Staff Memorandum: "Order to Testify Notwithstanding Fifth Amendment Privilege -- Tom Clines," 3/13/87.

17. Quintero FBI Int., 8/30/82, FB597-98. Quintero stated that at first Secord was not friendly but that their relationship grew much closer over the years. At the time of the interview, Quintero stated that he, Clines and Secord had gotten together about nine times during the course of the year. FB597-98.

18. FB389-92. The principal source of Wilson's wealth turned out to be arms deals. During 1983, Wilson was convicted of conspiring to sell arms and explosives to Libya as well as conspiring to murder the federal prosecutor and six witnesses in his trial. Washington Post, 1/10/84, at A4. See generally, Washington Post, 3/14/83, at A17.

19. U.S. Air Force Biography of Secord, N16289.

20. Hakim Dep., 5/22/87, at 28-29. Hakim claims that Wilson infiltrated his organization through Hakim's associate Frank Terpil. Hakim said that he kicked Wilson and Terpil out of his organization in 1976 or 1977. Hakim Dep., 5/22/87, at 32.

21. *Id.* at 17-18.

22. Ex. AH43 (legal brief submitted on Hakim's behalf by his attorneys in the course of a civil suit).

23. Hakim Dep., 5/22/87, at 19-20; Secord Test., *Hearings,* 100-1, 5/5/87, at 47. CIA files disclose that in August of 1976, CIA officer Ted Shackley tried to arrange for Secord to assist Hakim in his efforts to obtain security contracts with the Iranian government in return for Hakim providing intelligence for the CIA. Under Shackley's proposal, Clines was supposed to introduce Hakim to Secord. Shackley's proposal was rebuffed by a CIA official, in part because Hakim had taken advantage of the Iranians by selling them "unneeded over sophisticated equipment at exorbitant price[s]." C7147-59; Shackley Dep., 9/21/87, at 284-300. Hakim testified that Wilson introduced him to Clines and Shackley and that Wilson set up this arrangement on the understanding that he, Wilson, would receive a share of any profits made by Hakim. Hakim also stated that the meeting never occurred and that he did not remember who he was supposed to be introduced to in Iran. Hakim Dep., 5/31/87, at 229-33.

24. Wilson provided Secord with nearly exclusive use of a private plane for almost a year. FBI Report on Wilson's aircraft used by Secord, FB393, 389-90. Clines arranged for Wilson to buy a townhouse (originally sold to Secord by Clines) from Secord so Secord could recover the original investment. FB390.

25. Senate Committee Staff Memorandum, Subj: EATSCO and Secord/Clines Investigations, EN199, FB404.

26. Secord Test., *Hearings,* 100-1, 5/5/87, at 55.

27. FBI Closing Memorandum, Subj: EATSCO, FB2204; FBI Closing Memorandum, Subj: Clines and Secord, FB5038-39.

28. Hakim Dep., 5/22/87, at 45-47.

29. Hakim Dep., 5/22/87, at 44-45; Secord Test., *Hearings,* 100-1, 5/5/87, at 47; Zucker letter regarding STTGI security project, STG9141.

30. Clines and Secord maintained a close friendship. In 1984, when Clines needed $33,000 to pay the $100,000 EATSCO civil fine, Secord loaned him $33,000. Robinette acted as the courier of Secord cashier's check which was converted into a Clines cashier's check made out to the U.S. Treasury. Senate Committee Staff Memorandum Subj: EATSCO fine, 10/12/87, EN 69-72; Robinette, Test. *Hearings,* 100-6, 6/23/87, at 27-9.

Chapter 22
The Enterprise

Almost $48 million flowed into the Enterprise. It came from contributions directed to the Enterprise by North from Carl "Spitz" Channell and Richard Miller, third countries, and others. It came from the sales of arms to the Contras and missiles to Iran. It came from the sale of weapons to the CIA. The total would have been at least $10 million greater had the Brunei contribution not been misdirected.

All of the Enterprise's money went into Swiss bank accounts managed by an expert in handling money, Willard Zucker, and was protected by the world's most stringent secrecy laws. But the Enterprise did not rely solely on Swiss law to preserve the confidentiality of its operation. Zucker created a maze of companies through which money could be passed without trace. The corporate operations of the Enterprise were befitting of its covert charter.

One of the main objectives of the Committees was to penetrate this secrecy—to find out where the money came from, and where it went; and thus, to learn about the operations and organization of the Enterprise.

In the financial records of the Enterprise, the Committees found that:

—The plan—which North attributed to Casey—to create a worldwide private covert operation organization, with significant financial resources, was being implemented through a network of offshore companies administered in Switzerland.

—The Enterprise took in nearly $48 million during its first 2 years. Its income-generating capacity came almost entirely from its access to U.S. Government resources and connections: the contributions directed to it by North, the missiles sold to Iran, and the brokering of arms to the Contras as arranged by North.

—The Enterprise generated a substantial amount of its income from the sale of arms to Iran. Before its operations came to a halt, the Enterprise managed to divert at least $3.8 million from the Iran arms sale profits to the Contras.

—The Enterprise spent almost $35.8 million. It used its resources to finance covert operations not reported to Congress as required by law and, in some instances, not disclosed to the President.

—The income of the Enterprise exceeded its expenditures by $12.2 million.

—Secord, Hakim, and Clines took self-determined "commissions" from the $12.2 million surplus to reward themselves for their work on arms deliveries to the Contras and the CIA. The commissions totaled approximately $4.4 million, with an average markup of about 38 percent over the cost of the arms—not 20 percent as asserted by Secord.

—Contrary to their testimony that they only took "commissions" out of the Enterprise accounts, Hakim and Secord also took approximately $2.2 million from the $12.2 million surplus for personal business ventures and personal use. One of these business ventures involved plans to sell weapons to the Contras at substantial profits; another called for the sale of weapons to Iran.

—$5.6 million of the $12.2 million surplus was left in Enterprise accounts managed in Switzerland when the Enterprise ceased its operations in November, 1986. An additional $2.2 million from earlier commission payments and profit distributions remained in separate accounts managed in Switzerland for the benefit of the individual members of the Enterprise.

In the following seven sections, the Committees describe these findings in detail. The first section describes the Enterprise's records and explains the network of companies and bank accounts through which the Enterprise operated. The second traces the sources of the Enterprise's funds and North's role in generating them. The third describes the Enterprise's expenditures. The fourth examines the diversion. The fifth shows what happened to the "surplus," the excess ($12.2 million) of revenues over expenditures, and discusses Hakim's efforts to pass money to North. The sixth section describes where the Enterprise funds are now, and the seventh tells the story of what happened to the misdirected Brunei contribution.

Section 1: The Swiss Connection, the Secret Accounts and Companies, and the Covert Charter

The Swiss Connection

The Enterprise's records were maintained by Compagnie de Services Fiduciaries (CSF). CSF is a Swiss fiduciary company,[1] owned and administered on a daily basis by Willard I. Zucker, a U.S. citizen and former Internal Revenue Service (IRS) lawyer who has resided in Switzerland for 20 years.[2] CSF establishes tax haven offshore companies to hold the funds of its clients, satisfying the necessary formalities and keeping the books. It also accepts its clients' funds, keeping them in its name with a bank or investment house.

A Swiss fiduciary company has no exact counterpart in the United States. The client employing a Swiss fiduciary such as CSF—which uses Panamanian or Liberian companies, Swiss bank accounts, and offshore trust accounts—buys a triple layer of secrecy, a formidable barrier against identification of the location of money.[3]

Starting in 1971, Zucker provided banking-type services to Hakim.[4] The Zucker-Hakim relationship continued into the 1980s; thus, Zucker's services were available when Secord became Hakim's partner in 1983. As early as June 1984, Zucker visited the United States and met with Secord about a Hakim-Secord business project that involved supplying military equipment to an unnamed resistance group.[5]

Zucker was a discreet, efficient, and rapid channel for moving money. By merely telephoning Zucker in Switzerland, Hakim, and later Secord,[6] could order the movement of funds from Swiss bank accounts to the destination of their choice without a paper trace to either of them. With bank accounts in international tax havens and financial centers, CSF would simply issue a check from the most appropriate location.[7] When necessary, Hakim could direct Zucker to set up a new Swiss bank account and an offshore shell company to act as the nominal owner of the account. If Secord or Hakim wanted $50,000 in cash that could not be traced to a Swiss account, Zucker could arrange for that, too; Zucker would call upon business associates and other U.S. contacts to provide the cash and Zucker, in turn, would reimburse his sources.[8]

Thus, Zucker—who had a license to practice law in the United States, all the powers of a Swiss fiduciary, an inside knowledge of the IRS, and experience in meeting the needs of clients such as Hakim—was a covert operator's model banker, accountant, lawyer, and money manager.

The Secret Records

Zucker kept track of Enterprise funds on a series of ledgers, referred to herein as the CSF Ledgers. After being granted limited use immunity, Hakim provided the Committees with copies of the CSF Ledgers for the period from December 1984 until May 1986. Hakim also provided the Committees with copies of certain supporting documentation, including bank statements from Swiss banks, bank wire transfer records, incorporation documents, and fiduciary agreements.

For the most part, accountants for the Committees were able to verify the data contained in the CSF ledgers provided by Hakim. Methods employed included extensive analysis of the Swiss banking records provided by CSF through Hakim, corroboration by independent third parties, and analysis of relevant documentation obtained from banks in the United States.[9]

Zucker maintained three types of ledgers for the Enterprise. A "General Ledger" showed expenditures and receipts for each of the Enterprise's companies. "Capital Ledgers" tracked the distributions from Enterprise bank accounts to several individuals, including Hakim, Secord, and Clines. "Fiduciary ledgers" accounted for funds held by CSF (in its own bank accounts) in a fiduciary capacity on behalf of the Enterprise and various individuals, including Secord and Hakim.[10]

Secord and Hakim testified that they reviewed parts of the CSF Ledgers on several occasions. They were thus able to keep track of Enterprise income, expenditures, and "capital" distributions (which Zucker called profit distributions), despite the complexity of the banking structure.[11]

The Covert Charter

North testified that as early as 1984 Casey wanted to establish an offshore entity capable of conducting operations in furtherance of U.S. foreign policy that was "stand-alone"—financially independent of appropriated funds and, in turn, Congressional oversight.[12] During the first half of 1985, the Enterprise simply purchased arms and resold them to the Contras at a profit, which was distributed to its partners. It had no continuing assets of its own and conducted no operations apart from selling arms to the Contras. During this period, North steered contributions from Country 2 to accounts controlled by Contra leader Adolfo Calero in Miami. Calero transferred over $11 million to an Enterprise company named Energy Resources, Inc.[13] Energy Resources paid approximately $9 million for arms which were delivered to the Contras, and the profit of over $2 million was distributed to Secord, Hakim and Clines.

Starting in July of 1985, however, the donations raised by North were no longer sent to Calero's account, but were sent directly to accounts of the Enterprise. Using these funds, the Enterprise then begun to take shape as the "stand-alone" self-financed entity capable of conducting covert actions for the U.S.

Government which Casey, according to North, had envisioned. In April and mid-May 1985, three new companies were established: Lake Resources, Gulf Marketing, and Udall Research Corp; and in September 1985, Albon Values and Dolmy Inc. were added to the roster.[14] Most of the funds from Energy were eventually moved to Lake. Lake became the funnel for contributions to the expanded Enterprise organization.

As the network of companies and accounts grew, North asked Secord to produce a chart setting forth the organization of the Enterprise as envisioned by Casey. As North put it:

> A: Director Casey had in mind, as I understood it, an overseas entity that was capable of conducting operations or activities of assistance to U.S. foreign policy goals that was a standalone—
>
> Q: Self-financed?
>
> A: That was self-financing, independent of appropriated monies and capable of conducting activities similar to the ones that we had conducted here. . . .
>
> Q: Did I understand you to say . . . that the chart that you had drawn by Hakim, which is Exhibit [OLN] 328, was a chart to reflect that concept?
>
> A: . . . that chart was something that I had asked General Secord for.
>
> Q: Was it intended to reflect the concept as described by Director Casey?
>
> A: Yes.[15]

Hakim testified that in February 1986, with the assistance of CSF, he had the chart drawn on a computer and then gave it to Secord.[16] (See figure 22-1)

The chart was the blueprint for the off-the-shelf covert organization that Casey envisioned. It depicts three types of companies: collecting companies, treasury companies, and operating companies (collectively the "Enterprise Companies"). Hakim stated that the idea was that each collecting company would serve as the sole receiver of funds for the Enterprise for a period of time. When the first collecting company became too visible it could be cast aside and the next company would be taken off the "shelf" and brought into use. Thus, secrecy would be preserved.[17]

The treasury companies show the global scope of the plan. Each treasury company was responsible for holding funds for operations in a distinct region of the world: South America, the Middle East, and Africa.[18] Africa was included because, according to Hakim, Secord said—allegedly in jest—"who knows, if we do a good job, the President may send us to Angola."[19]

Each of the regional treasury companies, Hakim explained, would supply funds to "operating companies" within their respective regions. Each operating company would perform specific operations, and thus, the exposure of any single company would not bring down the entire network. For example, Toyco was to be used for the purchase and sale of weapons—euphemistically called "toys"—for the Contras, while Udall was to be used to run the air resupply operations.[20]

The final element of the chart, the section for reserves marked with an "R," reflects the plan for continuing operations—the essential ingredient for an "off-the-shelf," "self-sustaining" organization. Hakim stated that the "R" stood for the "Reserves" that were to hold the capital necessary for the Enterprise to become self-sufficient.[21] Appropriately, the chart provides that the reserves would be held by CSF Investments Ltd., the Bermuda branch of CSF that invests and manages funds of CSF clients.[22]

The financial records of the Enterprise show that Hakim and Secord attempted to follow the framework set forth in the chart. Time pressures, however, sometimes led to the use of a company for a different purpose from the one intended.[23]

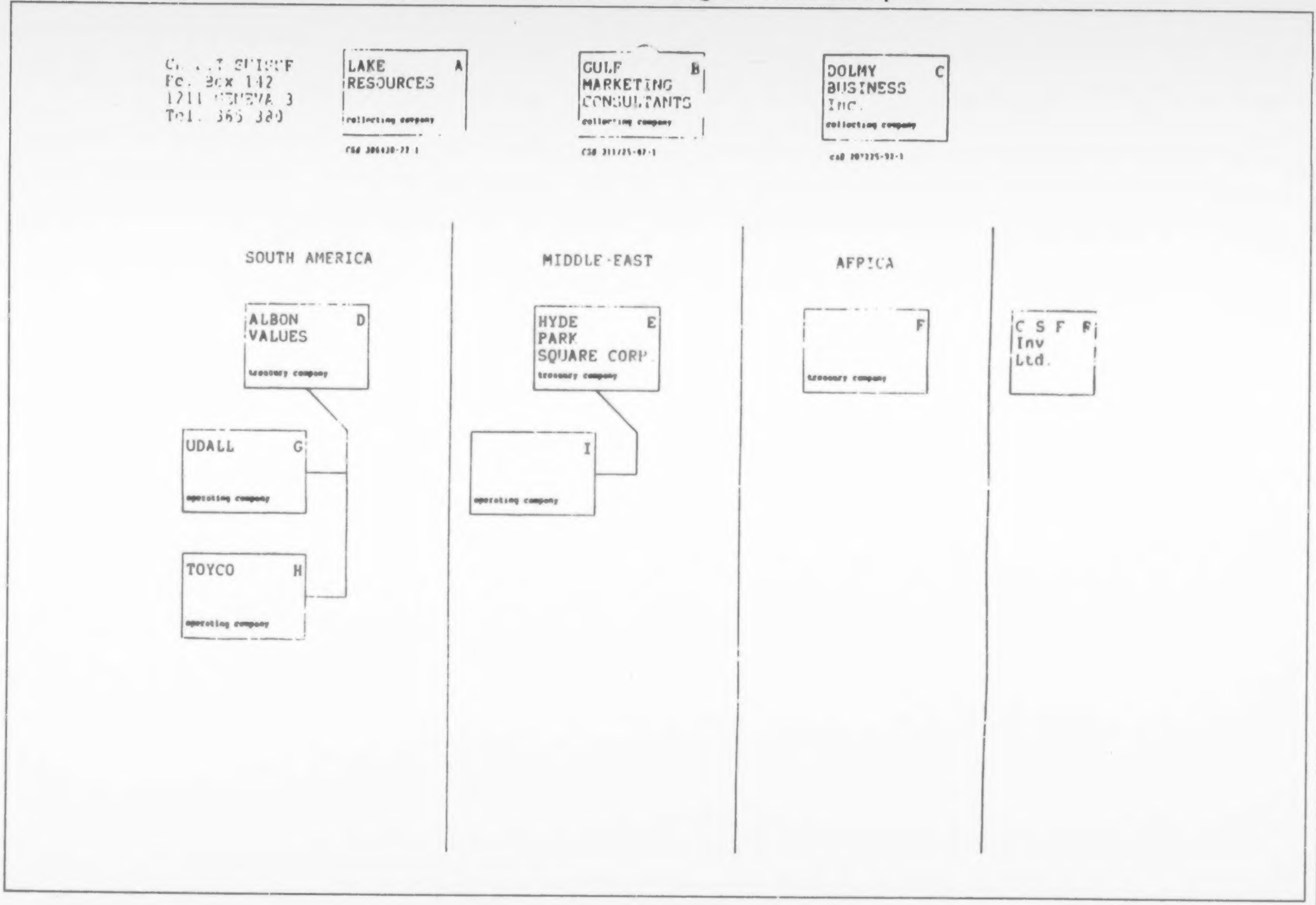
Lake Resources served as the collecting company for the Enterprise starting in the summer of 1985.[24] Gulf Marketing was supposed to replace Lake as a collecting company when Lake became too visible. But these plans were interrupted by the exposure of the Iran initiative in November and the closing down of the entire Enterprise.

Gulf did serve, however, as an intermediate account through which funds were passed to operating companies.[25] Dolmy was never put into use as a collecting company; rather, when the orders came from North to purchase a ship for a covert operation, Hakim pulled Dolmy off the shelf because he did not have another operating entity available. He explained:

> I was always hit with surprises. These surprises created a lot of headache and difficulty in the total system, gave a lot of difficulty to CSF and its staff. The requirement was to purchase a ship. They wanted things done always yesterday. There was not enough time.[26]

In Central America, where activity was the most intense, the Enterprise fully developed the network of companies set forth on the blueprint. Albon Values, the Central American treasury company, directed $4.3 million of its funds to two Central American operating companies: Toyco S.A. and Udall Research Corporation.[27] Performing their operational roles, Toyco[28] purchased arms for the Contras and made payments to Contra leaders, while Udall, among other things, bought and operated the aircraft for the resupply operation. Udall also leased land in Costa Rica,

Figure 22-1. Exhibit AH-1: Diagram of the Enterprise


C... SUISSE
PO. Box 142
1211 GENEVA 3
Tel. 365 380
LAKE RESOURCES A
collecting company
CSG 306430-22-1
GULF MARKETING CONSULTANTS B
collecting company
CSB 311725-02-1
DOLMY BUSINESS Inc. C
collecting company
CSB 207225-92-1
SOUTH AMERICA
ALBON VALUES D
treasury company
UDALL G
operating company
TOYCO H
operating company
MIDDLE-EAST
HYDE PARK SQUARE CORP. E
treasury company
I
operating company
AFRICA
F
treasury company
C S F R
Inv
Ltd.

where it built an emergency airstrip for the aircraft dropping supplies in Nicaragua.[29]

In short order, Zucker could create or dissolve a corporation as circumstances required. When the airstrip was publicly denounced by the newly-elected government in Costa Rica, and it was revealed that Udall owned the airstrip and that "Olmstead" was its agent, North wrote to Poindexter:

> [Last night, the Minister of Costa Rica announced that] authorities had discovered a secret airstrip . . . which had been built and used by a Co. called Udall Services for supporting the Contras . . . . Damage assessment: Udall Resources, Inc. SA, is a proprietary of Project Democracy [North's euphemism for the Enterprise]. It will cease to exist by noon today. There are no USG fingerprints on any of the operations and Olmstead is not the name of the agent—Olmstead does not exist.[30]

Hyde Park Square served as a switching point between the Iranian and Contra operations. Beginning on April 17, 1986, proceeds from the Iranian transactions were moved through Lake into Hyde Park Square, and then transferred to other accounts for the Contras and other covert operations. As a result, Hyde Park Square, shown on the chart as a Middle East treasury company, also became a collecting company that fed other accounts.[31]

Hakim and Secord also carried out the last step of the chart: the creation of "Reserves" totaling $4.2 million. As contemplated in the chart, the Reserves were held by CSF Investments Limited, Zucker's Bermuda subsidiary. Like a brokerage house, CSF Ltd. invested the Reserves in short-term deposits and in stocks. Pursuant to a written agreement, CSF was required to invest and spend the money in any manner directed by Hakim.[32] The Reserves are discussed in greater detail below, as is a special company, Defex SA, that does not show up on Hakim's chart.

Section 2: Income Generation

Table 22-1 and Figure 22-2 summarize the sources of the Enterprise income, from December 1984 to December 1986.

The details of each of these income-raising efforts are set forth in other chapters of this Report. The summary here demonstrates that every single source of Enterprise income involved North and the use of U.S. Government resources. Indeed, Secord flatly acknowledged this connection.[33]

Initially, North arranged for Calero to receive contributions and to purchase arms from Secord.[34] Later, the Enterprise received Contra contributions directly and used them to buy arms for the Contras.[35] Then Poindexter and North agreed to use the Enterprise as the agent for the Iranian initiative,[36] with North pricing the sales at a markup that generated excess funds for the Contra resupply operation and other Enterprise activities.[37] Through a conduit, the CIA became a source of funds for the Enterprise when it purchased weapons originally destined for the Contras.[38] Indeed, North tried to get the CIA to provide more: When the Boland Amendment expired and Congressional funding for the Contras resumed, he tried to persuade the CIA to purchase the Enterprise's aircraft and airstrip.[39] The only money the Enterprise was able to earn on its own was about $254,000 in investment income on the money that came from its U.S. Government connections.

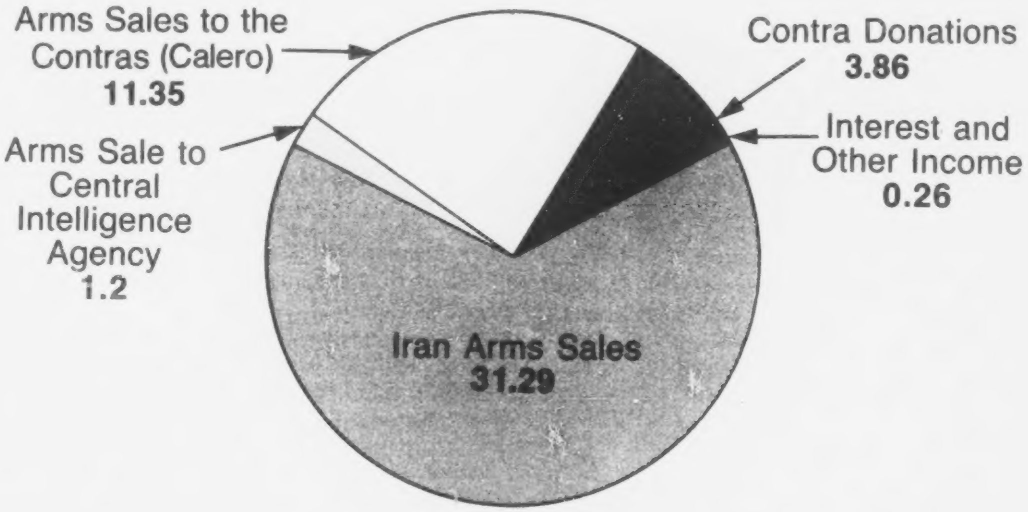
Table 22-1.—Enterprise Income [1] *1985 and 1986*

Source	Amount
Arms Sales to the Contras (Calero)	$11,348,926
Total	$11,348,926
Donations for the Contras:	
Institute for North-South Issues (Miller)	60,000
IBC (Miller)	429,839
IC, Inc. (Miller)	1,307,691
Country 3	2,000,000
Joseph Coors	65,000
Total	3,862,530
Arms Sales to Iran:	
Second Channel	3,600,000
Israel	2,685,000
Khashoggi	25,000,000
Total	31,285,000
Other:	
Arms Sales to the CIA	1,200,000
Interest Income and Miscellaneous	262,637
Total	1,462,637
Grand Total Income	47,959,093

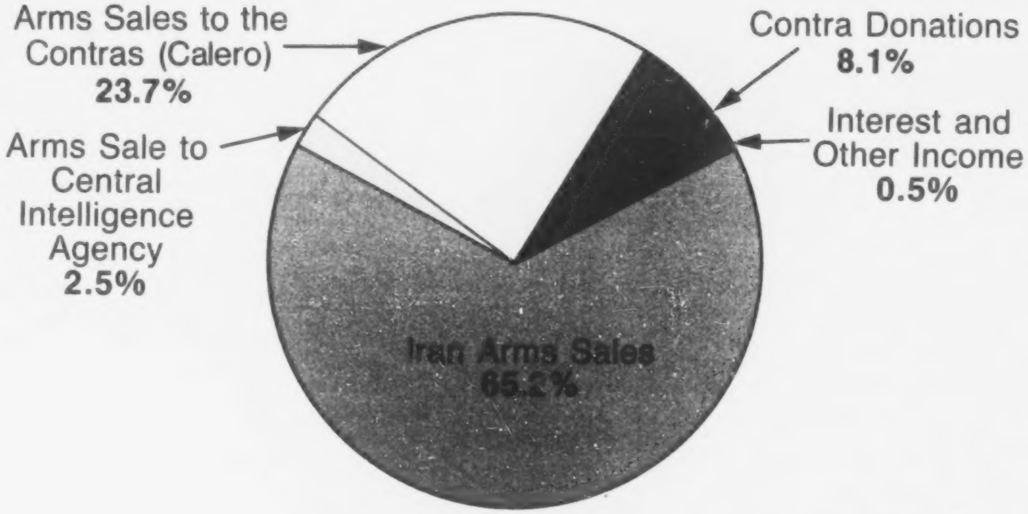
[1] Based upon analysis of the CSF ledgers and supporting bank records. H6378-79.

North helped generate the Enterprise's revenues, and, in turn, Secord and Hakim accommodated North's requests for funds and services. At North's request, the Enterprise bought a ship, sent radios to a foreign political party, and provided money to Drug Enforcement Administration (DEA) agents for a covert operation.[40] Hakim testified that, as a result of these kinds of demands, he was not sure who was making the decisions about the use of the Enterprise's funds—North acting as an official of the U.S. Government, or he and Secord.[41] As Hakim put it: "whoever designed this structure, had a situation that they could have their cake and eat it too. Whichever they wanted to have, a private organization, it was private; when they didn't want it to be a private organization it wasn't."[42]

Figure 22–2.
Enterprise Income
($47.96 Million).



(in millions)



Source: Compagnie de Services Fiduciaires ledgers.

The Cash Balances

The Enterprise companies built up substantial cash balances, which totaled almost $5.5 million by the time the operations came to a halt in December 1986.[43] Table 22-2 summarizes the ending monthly cash balances for the Enterprise companies and the Reserves. Hakim testified that he understood that North wanted a pool of funds available in Switzerland for the Contras and any other purpose he might designate.[44] Secord testified that he was "generating money to keep the Enterprise going."[45] Later, in an interview, he elaborated:

> The majority of the money was in [the Enterprise accounts] to provide operating capital for a very, very large enterprise which owned a ship, and which was preparing to buy a two million dollar 707, and which was preparing to set up permanent headquarters in Europe for a joint Iranian-American commercial venture.[46]

Table 22-2.—Estimated Ending Monthly Cash Balances[1]

Month Ending	Enterprise[2] Companies	Reserves	Total
Dec. 84	$10,957		$10,957
Jan. 85	418,939		418,939
Feb	344,591		344,591
Mar	3,543,489		3,543,489
Apr	4,128,476		4,128,476
May	1,573,472		1,573,472
June	1,515,879		1,515,879
July	1,316,089		1,316,089
Aug	725,123		725,123
Sept	1,561,631		1,561,631
Oct	1,123,709		1,123,709
Nov	918,867		918,867
Dec	513,595		513,595
Jan. 86	394,166		394,166
Feb	6,755,693		6,755,693
Mar	4,106,152	$2,000,000	6,106,152
Apr	2,462,197	2,000,000	4,462,197
May	8,799,871	2,000,000	10,799,871
June	5,269,057	4,200,000	9,469,057
July	2,019,829	4,200,000	6,219,829
Aug	612,383	4,200,000	4,812,383
Sept	1,144,218	4,200,000	5,344,218
Oct	1,944,486	4,200,000	6,144,486
Nov	1,441,331	4,200,000	5,641,331
Dec	1,299,127	4,200,000	5,499,127

[1] Based upon an analysis of the CSF Ledgers and supporting bank account records. During the month of May the bank account balances went as high as $23 million; the money was rapidly spent, however, pursuant to the Iran arms transactions. Ending monthly balances, shown here, present a more accurate picture of cash freely available to the Enterprise.

[2] Includes funds controlled by Energy, Lake, Gulf, Udall, Albon, Dolmy, ACE, Hyde Park, ToyCo, Stanford Tech Services, S.A., and Defex SA. ACE was created for the Contra air resupply operation. Stanford Tech Services paid American Express bills for Hakim and Secord.

Section 3: Expenditures

All told, the Enterprise spent almost $35.8 million—out of the nearly $48 million it took in—on covert operations. Table 22-3 and Figure 22-3 summarize the expenditures.

Table 22-3.—Enterprise Expenditures[1]

1. CENTRAL AMERICA:	
Arms Purchased for Sale to Calero:	
Defex[2]	$7,487,606
Transworld Arms	1,390,532
Total	8,878,138
Arms Purchased and Donated to Southern front Defex	864,407
Air Resupply:	
C-123 (Doan Helicopter)	475,000
C-123 (Hanson Sale)	250,000
Maule Aircraft (Maule Air)	183,238
Caribous (Propair Inc.)	1,096,966
Airfield	125,000
Southern Air Transport[3]	1,991,512
Corporate Air Services	437,688
Aero Contractors	70,756
East	657,804
Central American Contractor	192,233
Quintero	198,376
David Walker	110,000
Other[4]	73,367
Total	5,861,940
Contra Leaders and Others:	
Calero	200,000
Contra Leader	59,500
Contra Leader	155,000
Calero's Broker	200,000
Contra Leader	50,000
Total Contra	664,500
Legal Support:	
Shea and Gardner	20,000
Tom Green	90,000
Sharp, Green, and Lankford	1,671
Total	111,671
Other	130,217
Total	16,510,873
2. MID-EAST (IRAN ARMS):	
Payments to CIA for Arms	12,237,000
Israel[5]	732,250
Southern Air Transport	1,151,000
Aeroleasing	226,998
CIA Proprietary Airline	127,700
Related Costs	457,700
Advance to Richard Secord	260,000
Total	15,192,648
3. WORLD WIDE:	
Erria (North Africa)	743,409
DEA Agents	30,150
Radios for foreign government	100,000
Defex[2] (Arms sold to CIA)	2,226,987
Total Contra	3,100,546
4. OTHER	967,953
Total Expenditures	35,772,020

[1] Based upon an analysis of CSF ledgers and supporting bank account records, H6344-62.

[2] These expenditures include payments to Alkasser totalling $1.5 million. According to Richard Secord, Alkasser is an agent for Defex and the $1.5 million covered arms purchases from Defex. The expenditures also include prepaid transportation costs.

[3] According to Southern Air's records, this includes $598,390 for delivery of arms to Calero and the Southern Front.

[4] Includes $48,165 which, as of 10-22-86, remained in ACE's bank account.

[5] Payment for leasing of aircraft.

When asked about the cash balances, North testified that Casey wanted the Enterprise to become a self-sustaining operation so that "there [would] always be something there which you could reach out and grab . . . at a moment's notice."[47] But North also said that he was surprised by the size of the balance, adding, "I am not willing at this point to accuse anybody."[48] He also acknowledged that he had been told in September 1986—even though the cash balances were then approximately $5.3 million—about a shortage of money available for the Second Channel Iranian initiative.[49]

Throughout 1985 and the first half of 1986, Enterprise cash surpluses, including the Reserves, were increasing. They reached their height in May 1986. As of May 1, 1986, the funds in the accounts of the collecting companies, treasury companies, operating companies (collectively the "Enterprise companies") and the Reserves, contained approximately $10.8 million.

In October 1986, at the same time New York businessman Roy Furmark was threatening to expose the initiative if the Iran arms financiers were not paid, the Enterprise companies and the Reserves still had a total cash balance in the vicinity of $6.1 million.

Central American Expenditures [50]

In the beginning, the Enterprise simply sold arms to the Contras. Its Contra arms-brokering operation—complete with an offshore company and an offshore account—was only the first stage for the full-service covert organization that, according to North, Casey envisioned.[51]

From December 1984 through July 1985, Calero transferred $11.3 million to Secord.[52] Secord used the money to provide five arms shipments, described by Secord as Phases I through IV (one of the five shipments was a supplement to a previous one).[53] Secord spent a total of $9.4 million for the arms he sold to Calero, including transportation costs; however, the total cost—including commissions for Secord, Hakim, and Clines—exceeded $11.3 million; the shortfall was made up with other Enterprise funds, including donations from the private fund-raising network.[54]

From February until May 1986, the Enterprise purchased approximately $3.1 million of military equipment from Defex, a Portuguese arms supplier.[55] It delivered some of the arms, paid for largely by the Iranian weapon sales and third-country contributions, in three airlifts which took place in March, April, and May 1986 (described by Secord as phases V through VII).[56] Additional arms purchased during the same period (the "stranded shipment") never reached the Contras.[57]

In addition, the Enterprise spent approximately $5.9 million for air resupply operations, which had been planned by North, Secord, Clines, and Quintero in July 1985. It acquired an air force, purchasing two C-123 cargo aircraft, two Caribou aircraft, and three Maule aircraft.[58]

More than $1.5 million (out of the $5.9 million) was transferred by the Enterprise to various vendors through Amalgamated Commercial Enterprises (ACE), a Panamanian company established by Richard Gadd to pay for the Caribous, air crews and other expenses associated with the resupply operation. According to Gadd, he was originally told by Secord that he, Gadd, would own the aircraft through ACE, but Secord later changed his mind and the Enterprise retained ownership through its Udall Corporation.[59]

Operating the airplanes was expensive: the Enterprise paid Corporate Air Services a total of $437,688, directly and indirectly, for the crews used in the resupply operation. Southern Air Transport received approximately $2 million for aircraft spare parts, fuel, and other services in connection with the resupply operation.[60] Eagle Aviation Services and Technology, Inc. (EAST), another Gadd company, received $657,804 for providing other air services.[61]

David Walker, a British expert in guerrilla warfare recruited by North, received $110,000 for his services on May 5, 1986.[62] Secord noted that during the July meeting in Miami it was decided that the resistance needed "to get into some of the urban areas."[63] North testified that in 1985, he authorized Walker to perform military operations "in Managua and elsewhere in an effort to improve the perception that the Nicaraguan resistance could operate anywhere that it so desired."[64] Later, Walker provided two technicians to help carry out a military operation in Nicaragua.[65] Secord and Hakim testified that in 1986 Walker provided air crews for the resupply operation.[66]

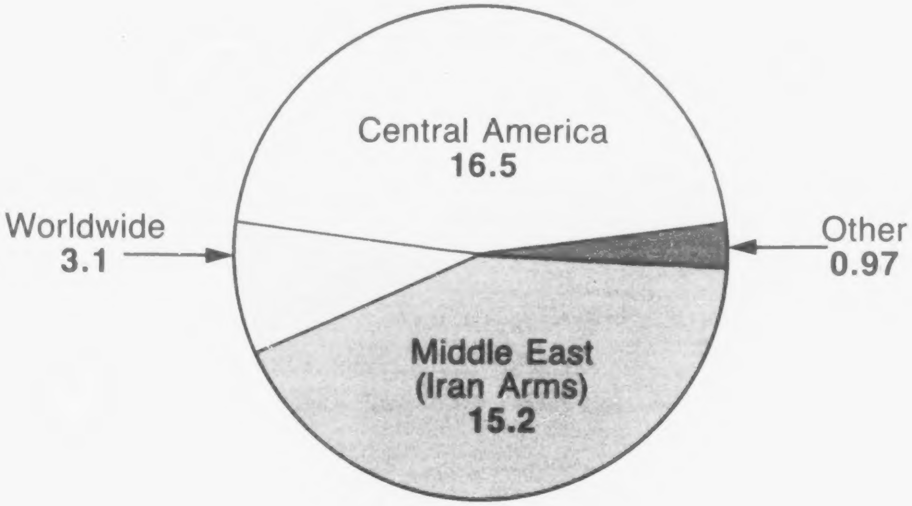
The Enterprise acquired land for an airstrip in Costa Rica for a down payment of $125,000 and a purchase money mortgage of $4,875,000. A Central American contractor who constructed the airfield, received payments totaling $192,233 from February through July 1986.[67]

The Enterprise disbursed funds to a number of Contra leaders. It paid $50,000, $155,000, and $59,500, respectively, to three Contra leaders, and $400,000 to Calero and his broker for food supplies and other expenses.[68] North may have had even more complex plans for payments to the Contras.[69] Figure 22-4 summarizes expenditures related to the Contras.

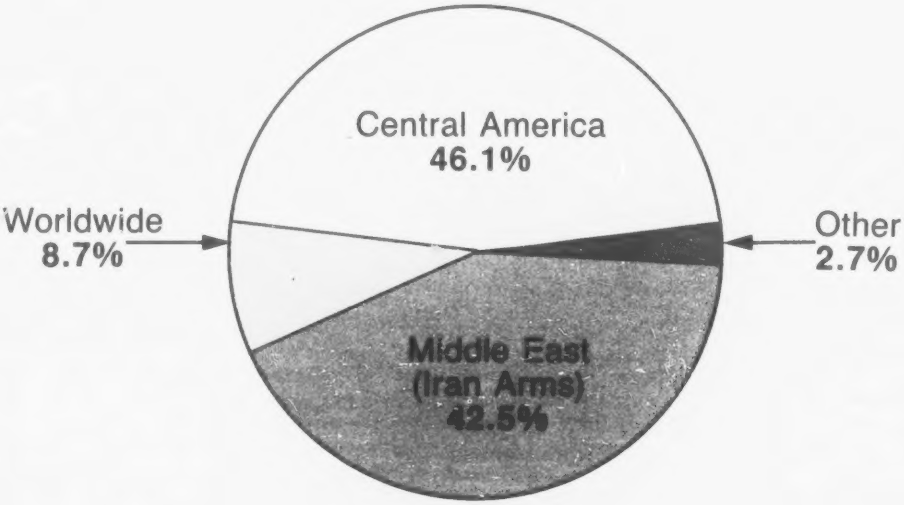
Figure 22-3.

Enterprise Expenditures, December 1984 through December 1986

($35.77 Million)



(in millions)

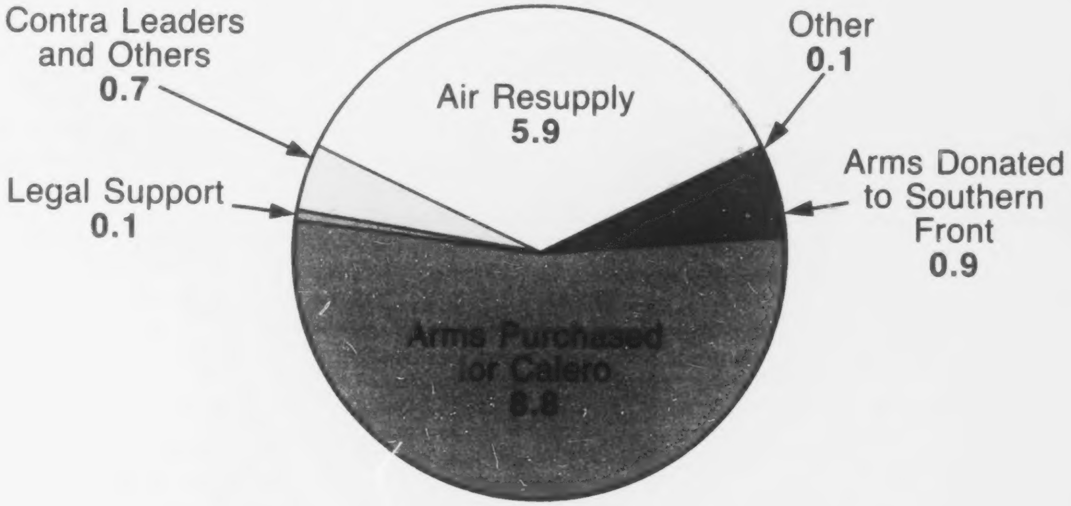


Source: Compagnie de Services Fiduciaires ledgers.

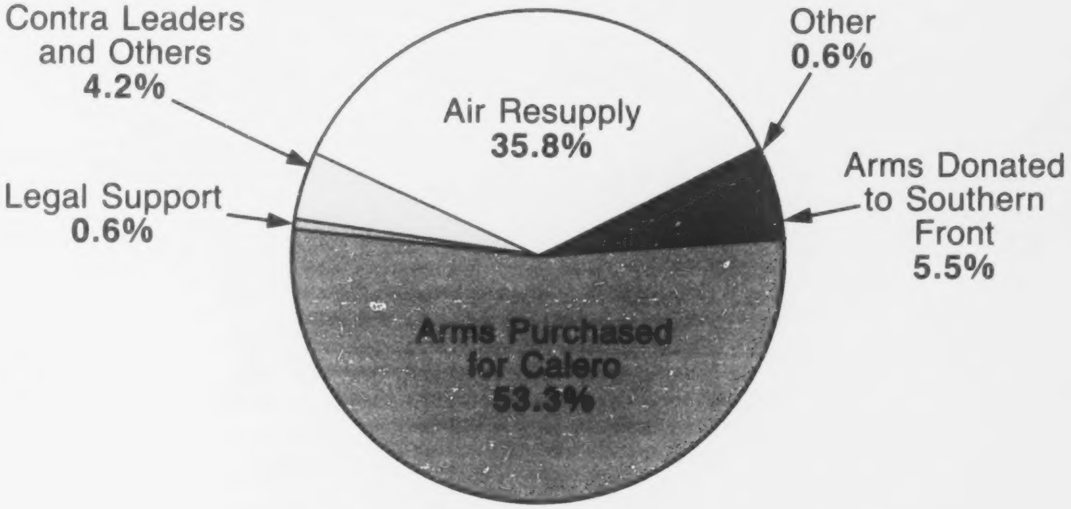
Figure 22-4.

Expenditures Relating to the Contras

($16.5 Million)



(in millions)



Source: Compagnie de Services Fiduciaires ledgers.

The Mideast: Expenditures for the Iran Operations[70]

The Enterprise was involved in every NSC-connected shipment of weapons to Iran from November 1985 on. The net surplus generated by these transactions for the benefit of the Enterprise was $16.1 million.

The first transaction, the Israeli November 1985 HAWK shipment, generated a net surplus of $850,317. The transaction began when an Israeli intermediary deposited $1,000,000 into the Lake Resources account on November 20, 1985. Eighty Israeli owned HAWKs were to be transported by the Enterprise to Iran in four separate shipments. Only 18 HAWKs were delivered, however, before the Iranians terminated the transaction. The Enterprise incurred charter expenses of $127,700 for the delivery of the 18 HAWKs, and $21,983 for a private jet for Secord. This left the Enterprise with $850,317. According to Secord, the Israelis told North that the extra money could be used for "whatever purpose we wanted."[71] After discussing the matter with North, Secord agreed to use the money for the Contras and testified that he did so.[72]

The Enterprise's role in the next transaction—the sale of the 1,000 TOWs in February—was more active. The Enterprise was the "commercial cut-out" for the CIA, receiving the money for the missiles from Ghorbanifar, paying the CIA for them, and delivering them to Iran. The net surplus from this transaction was approximately $5.5 million. As it did with the Calero arms sales, the Enterprise received payment to cover the cost of the arms before the arms were purchased. Between February 7 and 18, 1986, Khashoggi (who was financing Ghorbanifar) transferred a total of $10 million to the Lake Resources account for the shipment. On February 10 and 11, Secord directed a total payment of $3.7 million to the CIA for the TOWs. In addition, payments totaling $484,000 were made to Southern Air for the delivery of missiles from the United States to Israel; one payment of $185,000 was made to the Israeli Ministry of Defense to transport the TOWs from Israel to Iran; another payment of $100,000 was made to the Israeli Ministry of Defense for other related activities; and $31,500 was paid to an Israeli bank for miscellaneous expenses.

The Enterprise's role was the same in the third transaction—the deliveries of the HAWK replacement parts to Iran in May and August 1986, and the shipment of TOWs to Israel to replenish the TOWs sold to Iran in September 1985. The net surplus from this transaction was approximately $8.3 million.

Khashoggi financed the May transaction for Ghorbanifar, transferring $15 million to the Lake Resources account on May 14 and 16, 1986, for the HAWK parts. On May 15 and 16, the Israeli Ministry of Defense transferred a total of $1,685,000 to the Lake Resources account for the TOWs.[73] After Khashoggi's first payment was received, Secord directed the Enterprise to pay $6.5 million to the CIA to cover the cost of the HAWK spare parts and the TOWs. In order to pay for the delivery of the HAWK parts, the TOWs, and McFarlane's trip to Iran, the Enterprise paid $667,000 to Southern Air and $447,250 to the Israeli Ministry of Defense. Dutton received $40,000 to cover the cost of the crew and other expenses on the Israel-to-Iran leg of the mission. Secord also appears to have received $260,000 which was apparently related to the Iran transactions.[74]

Finally, the Enterprise paid $205,015 for expenses of chartering corporate aircraft for Secord and North in connection with their negotiations with the Iranians.

The fourth and final transaction consisted of the shipment of 500 TOWs from U.S. stocks to Iran through the Second Channel. The net surplus was $1.4 million. The Second Channel advanced $3.6 million to Hyde Park Square on October 29, 1986, for the TOWs. Hyde Park, in turn, paid the CIA $2,037,000 for the missiles and incurred other expenses aggregating $161,240.

Worldwide Projects

The Enterprise's expenditures were not limited to Central America and the Middle East. In May 1986, North directed Secord to purchase a ship for other covert operations. Accordingly, the Enterprise spent $743,409 on the purchase and operation of a Danish vessel named the *Erria*.[75]

North directed a project with DEA agents to try to free certain hostages which contemplated paying bribes and, indirectly, a $2 million ransom to their captors. North turned to businessman and philanthropist H. Ross Perot, who agreed to provide $2 million for the project. In addition, North called upon the Enterprise which paid $30,150 to the DEA agents for their expenses.[76]

At North's request, the Enterprise paid $100,000 for radios supplied to a political party of a foreign nation.[77] Another project involved an attempted propaganda effort in a foreign country. North disclosed to the Committees in an executive session that a number of other projects were in the planning stages.[78]

The North Residence Security System

Another Enterprise expense was a home security system, which cost approximately $16,000, for the residence of Oliver North. As early as September 1985, North reported harassment which he attributed to anti-Contra demonstrators, including damage to part of the fence around his home and one of his cars.[79] In the spring of 1986, the press reported that

Abu Nidal, the international terrorist and assassin, had placed North on his "hit" list. When the FBI advised North that it was not authorized to provide protection, North made a request to Poindexter for assistance. Poindexter did not follow up on the matter.[80] According to the Marine Corps, North did not request protection for his home from the Corps, an option that was available to him.[81] North told Secord about the problem and Secord offered to help.[82]

Secord asked Glenn Robinette, an ex-CIA officer with experience in electronic surveillance and security, for assistance. Secord had hired Robinette in late March to do investigative work related to the Avirgan and Honey lawsuit, at a fee of $4,000 a month plus expenses. Robinette examined the North residence and met first with Mrs. North, then with North and Secord. Robinette proposed a security system designed primarily to provide protection from trespassers, not terrorists, at a cost of $8,500. According to Robinette, North responded to the effect, "Please try to keep it along those lines. Remember, I am a poor lieutenant colonel."[83]

Robinette paid the installers of the system, which included a remote control electronic gate, approximately $13,900—$6,000 in May and roughly $7,900 on July 10th when the installation of the system was complete. At the time of each payment, Robinette reported to Secord, rather than North, for reimbursement because he was "working for Secord." Secord reimbursed Robinette for his time and expenses with $7,000 in cash and a $9,000 check drawn by Zucker from Enterprise funds and mailed to Robinette at Secord's request.[84]

On August 6, 1986, at a meeting in the White House, North told Members of the House Permanent Select Committee on Intelligence, who were inquiring about his involvement with the Contras, that he had installed, at his own expense, a security system to protect his family from anti-Contra demonstrators.[85]

North testified that a bill never came for the security system and that he assumed that "an accommodation was worked between Mr. Robinette and General Secord to make a gift out of [the] security system."[86] Secord, in an interview, denied that he made the gift or approved it. From Secord's viewpoint, there was a misunderstanding: Robinette asked for his expenses and Secord never realized that those expenses were for the security system rather than for investigative work.[87] Robinette testified as follows:

> Q: When you went to General Secord to seek reimbursement [for the final payment to the security company], you told him what you were seeking reimbursement for, didn't you?
>
> A: Yes, sir.
>
> Q: He knew he was paying you for the security system, didn't he?
>
> A: That would be my understanding, sir. I usually told him what I was asking to be paid for.
>
> Q: There is no question about it, is there?
>
> A: No, sir, there is no question about it.[88]

In December 1986, North realized that the gift of the security system "just didn't look right."[89] By that time, North had been named in the Justice Department application for the appointment of an Independent Counsel. North called Robinette and asked him to send a bill.[90] Since the system had already been paid for, Robinette assumed that North wanted to make it appear that he (North) had actually paid the bill. Robinette, who told Secord that he was going to send North a bill, sent North two back-dated bills of payment due, dated months earlier but actually written and delivered at the same time in December 1986.[91]

North, in turn, wrote two back-dated letters, designed to fit with Robinette's bills, which told a false story about financial arrangements relating to the security system. In the first, dated May 18, 1986, but written in December 1986, North stated that it was his understanding that he could pay for the system either through 24 monthly installments or by making his house a demonstration unit. North concluded the letter by informing Robinette that he was selecting the second option. In the second letter, dated October 1, 1986, but also written in December, North apologized for the delay in responding to the first and second notices and reminded Robinette that he wished to pay for the system by making his home available as a demonstration unit.[92] In his testimony, North stated that he typed at least one of the letters on a demonstration typewriter in a typewriter store, rather than using a home typewriter.[93]

On the morning of March 16, 1987, as Robinette went out to get his morning paper, he was interviewed by a reporter about the driveway gate which was part of the North security system. Robinette stated that he installed the gate for North at no charge, hoping that North "might steer business his way" and that he would be able to put in gates for North's neighbors.[94] Later in the day, North called Robinette, asking to meet with him on the following day at his lawyer's office, and requesting that Robinette bring copies of the back-dated letters.[95]

Robinette gave the letters to North's attorneys, but did not say they were spurious. Robinette then went to see Secord who, upon learning that Robinette had sent North a bill for the security system, stated, "You did the right thing." That same afternoon Robinette received a call from North's attorney, who told him not to protect North, and to "tell the truth, tell the truth, tell the truth." He also advised Robinette to get an attorney. Robinette did so. Later, after receiving immunity, he related the above-described events to the Independent Counsel and the Committees.[96]

North testified that in fabricating the letters in December 1986, "I did probably the grossest misjudgment that I have made in my life."[97] He added that he had acted, in accepting the system, to protect his family and told the Committees, "If it was General Secord who paid the bill . . . you guys ought to write him a check, because the Government should have done it to begin with."[98] North offered no explanation as to why he also created the false record, other than that the gift "just didn't look right."[99]

Unexplained Cash Expenditures

The CSF ledgers record expenditures of approximately $902,110 during the period from March 1985 to October 1986 without identifying their specific purpose. Two transactions accounted for the bulk of these funds. The first involved a $260,000 cash disbursement on May 21, 1986.[100] In the second transaction, $310,000 was withdrawn from the Hyde Park account on July 18, 1986.[101] The ledgers state that in both cases, the funds were "in transit," but where they went is unknown. In addition, the Enterprise transferred $152,200 to an account called Codelis.[102] Finally, Hakim, Secord, and Clines received cash totaling $179,610 from various Enterprise accounts; these transactions were listed as "business expenses," and were in amounts of up to $50,000 each.[103]

Section 4: The Diversion—How Much?[104]

The Iran arms sales generated a $16.1 million surplus for the Enterprise. The Enterprise managed to spend part of that money, $3.8 million, for the Contras before its operations were stopped.

As of November 19, 1985, the day before the first money from the Iran arms transactions was deposited into the Enterprise, the Enterprise had a cash balance of approximately $1 million. From November 20, 1985 through December 1986, the Enterprise received an additional $2.4 million in donations for the Contras. During the same period, the Enterprise spent approximately $7.2 million on behalf of the Contras.[105] The shortfall—$3.8 million—was diverted from the Iran arms sale surplus.[106]

The diversion did not take place by accident. In fact, North helped set the price of the arms so that a surplus would be created which could be used for the Contras.[107] According to Secord, North consistently instructed him to use the surpluses generated from the Iranian arms sales for the Contra project.[108] North apparently thought that at least $6 million of the Iran surplus from the May transaction alone would be used for the Contras. He sent Poindexter a PROF note on May 16, saying that the Enterprise had "more than $6 million available for immediate disbursement."[109] Poindexter testified that he believed that the Enterprise was giving the Contras all of the surplus from the Iran arms sales.[110]

Section 5: Profits—Who Made What

Breaking the Code Names

Hakim was both a promoter and a salesman: The Enterprise was a great opportunity to make a great deal of money and, he said, at the same time, to serve both his new country, the United States, and his native country, Iran. Hakim added:

> I never pretended to undertake the tasks I was asked to perform for philanthropic purposes and I made that clear to all of those with whom I [w]as involved—including General Secord, Lieutenant Colonel North, the CIA, and the Iranians.[111]

The Enterprise fulfilled Hakim's objective: without risking any of its own or Hakim's money, the Enterprise made extraordinary profits through weapons sales. Its revenues of $48 million exceeded its expenses by $12.2 million. Secord preferred to speak of this money as "residuals" or "surplus" rather than profit because he did not want to be called a "profiteer."[112]

Not only was the structure and operation of the Enterprise cloaked in secrecy, so was the distribution of its profits. The CSF records indicate that $6.8 million of the $12.2 million "surplus" was distributed as profits directly or indirectly to five entities: "Albert Hakim, Korel Assets, C. Tea, Scitech, and Button."[113] In addition, $4.2 million was transferred to CSF to be held in a fiduciary capacity for the Enterprise as "Reserves."[114] The balance, $1.2 million, remained at the end of 1986 as undistributed cash in the Enterprise's operating companies.[115]

Each of the five entities had a Capital Ledger. Each time funds were distributed from Enterprise accounts to one of the five entities, the date and the amount of the transfer were recorded in that ledger. Generally, the funds were wired from Enterprise accounts either to a bank account controlled by one of the five entities or CSF, where at least four of the five entities had entered into individual fiduciary agreements. The fiduciary agreements provided that CSF would manage the money of each entity and return all or part of the money to the entity or its representative upon demand. Hakim produced records of a CSF fiduciary fund for Korel, Hakim, Scitech, and Button, including ledgers for each fund.[116]

Only Hakim's Capital Ledger was in his own name.[117] Hakim stated that C. Tea was the code name for Thomas Clines,[118] who handled the Contra arms procurement for the Enterprise.[119] The records bear that out.[120] Hakim testified that Scitech was the offshore arm of the Secord/Hakim firm STTGI and that it was equally owned by Secord and Hakim. The records also support that statement.[121] Hakim also testified that Korel stood for Secord, and Button stood for North.[122]

Korel Assets

Hakim testified that Korel Assets was a corporation that held Secord's profit share.[123] The records of the Enterprise support Hakim's testimony. Profit distributions to Korel match, often to the last dollar, distributions to Secord's equal partner, Hakim.

According to the CSF Ledgers, $1.62 million was transferred out of the Enterprise accounts for the benefit of "Korel Assets." Most of this money was distributed to the Korel Assets Fiduciary Fund where it remained unspent. However, $269,000 was transferred either directly from the Enterprise accounts or indirectly through the Korel Fiduciary Fund to the U.S. or elsewhere. The Committees have traced most of this money to: Secord's personal bank account (including payments for a personal airplane) ($74,600); payments for Secord's Porsche ($31,825); payments for a stay by Secord at a health farm ($3,075); and cash withdrawals where Secord signed the withdrawal slips ($33,000).[124] An additional $126,492 went for other purposes.[125]

Secord testified that he was unaware that Korel Assets stood for him and that it held his profit share.[126] He claimed that the money he personally received from Switzerland came through Hakim as personal loans or as payments for work unrelated to the Enterprise. Hakim never mentioned Korel to Secord. As far as Secord was concerned, the money for the Porsche was a loan from Hakim (even though Secord signed no note and paid no interest), and the money for the airplane was Secord's share of a consulting fee.[127] Hakim denied that the money for a Porsche was a loan and indicated that in both cases he took the money from Secord's profit share.[128]

Secord testified that he was originally an equal profit participant with Hakim in the Enterprise, and that the same 50/50 profit-sharing arrangement applied to any profits from any Enterprise company, including Korel Assets.[129] According to Secord, CSF initially held his profits under his name. Then, sometime in July or August 1985, he orally foreswore his interest in any profits of the Enterprise.[130] He stated that after he foreswore his profits, he "left to Hakim to do with [them] as he wished." If Hakim placed the money in a CSF fiduciary fund called Korel Assets for him, Secord was unaware of it. In addition, Secord asserted that Hakim calculated profits on the Contra arms deals, and that Secord had no specific knowledge about the profit distributions.[131]

Hakim confirmed part of what Secord said. Hakim stated that Secord orally relinquished his interest in any profits, not in mid-1985, but in "early to mid 1986."[132] Hakim noted, however, that he ignored Secord's oral waiver and he continued to treat the money held by Korel Assets as Secord's profit share that Secord could claim at any time.[133] Secord, Hakim declared, was not a good businessman who could keep track of money; rather, "he was born a general and will die a general."[134]

Hakim denied that he was the one ultimately responsible for profit distributions and indicated that Secord was aware of Korel and its function. Hakim testified that Secord was the final authority on profit distributions (commissions were distributed to Korel, Hakim and C. Tea through August 1986).[135] And, according to Hakim, Secord inspected the profit entries of the Enterprise books, including those of Korel Assets, as late as May 1986.[136] Hakim also stated that Secord's profits were distributed to Korel Assets with Secord's specific approval so as "to eliminate personal contact to those funds."[137]

Except in a few cases,[138] Secord's name does not appear on the CSF documents produced by Hakim.[139]

"Button"

On May 20, 1986, the Enterprise transferred $200,000 to "B. Button." The money was wired out of an Enterprise account to CSF, which agreed to hold the funds for "B. Button" under a CSF fiduciary agreement. The transfer was recorded in the Button Capital Ledger as a distribution for the benefit of Button.[140]

Hakim's explanation of the Button money changed during his deposition. He initially testified that the Button fund was set up to pay death benefits for the pilots in the Contra air operation and that Button meant "Button up or something."[141] When told of a handwritten note by Zucker referring to "Mrs. Belly Button," Hakim said that Button meant "bellybutton" and gave an almost incomprehensible explanation.[142] Hakim, who denied that Button stood for anyone's name, failed to explain why "Button" had a Capital Ledger, as if it were sharing profits.

Two days later, Hakim stated that the $200,000 was a death benefit for Mrs. North and her family in the event of North's death. The Capital Ledger "Button" referred to distributions for the benefit of North. Shortly thereafter, Hakim produced the "B. Button" fiduciary agreement which showed that $200,000 was being held by Zucker for B. Button. And after being shown the reference to "Mrs. Bellybutton," Hakim admitted that it was the code name for Mrs. North. (Button was short for North's codename—Bellybutton.)

Hakim testified that he had proposed to Secord that a $500,000 death benefit be set up in connection with North's trip to Tehran in May 1986, but that Secord had rejected the proposal telling Hakim that he did not "understand a soldier's life." Hakim then proposed $200,000, and Secord acquiesced.[143] Hakim said that his motive was humanitarian: he had become extremely fond of North (whom he had met only once) and wanted to relieve North's anxieties about his family. He asserted he never told North about the Button Fund, but did say if North did not return from Tehran "as long as one of us is alive you need not worry about your family."[144]

The death benefit for North had not emerged in Secord's prior interviews and public testimony. When asked about Hakim's testimony, Secord acknowledged that Hakim told him of the need for "insurance coverage" for North. Secord claimed that he told Hakim that they "couldn't set up an insurance coverage for Ollie North," but that North could be covered by the $200,000 death benefit fund which had been set up in November 1985 for the pilots involved in the resupply operation.[145] He recalled opposing the notion of a $500,000 fund.[146]

North offered a third version. He testified that in early March, just after he met Hakim, Hakim told him, "If you don't come back, I will do something for your family."[147]

The matter did not end with the creation of the Button Fund. Hakim also testified that he sought a way to give money to Mrs. North for the education of the North children, after he learned from Secord that North was worried about college costs. Hakim testified that he decided to offer Mrs. North $15,000, representing the annual interest on the $200,000 Button account, and that he asked Zucker to try to pass money to Mrs. North in a "legal, proper way." According to Hakim, Zucker telephoned Mrs. North directly, and told her that he was representing an anonymous admirer of her husband who wanted to help her family financially and that he wished to meet with her in Philadelphia.[148]

Secord gave a different version. He testified that Hakim never said anything to him about giving money to Mrs. North, but had mentioned only that Zucker was a "wizard" at making money for other people, and that he might be able to advise Mrs. North on investments.[149] Secord stated that he told Hakim that the Norths did not have any money to invest, and that you could not make "chicken soup out of chicken feathers."[150] Although Secord considered it a "bad idea," Hakim insisted that he ask North.[151] Secord called North at least twice about the matter.[152] In particular, Hakim spoke to Secord about the "requirement" to put a North child in college. As a result, Secord testified, Mrs. North met with Zucker when he came to Philadelphia in the spring.[153] North testified that he sent his wife to Philadelphia for the meeting with Zucker, but that

> [t]he purpose, as I understood it, of that meeting was that my wife would be in touch with the person who would, if I didn't return, do something for my family.[154]

There are three reports, all second hand accounts, of the meeting between Mrs. North and Zucker. (Mrs. North, invoking her spousal privilege, declined to testify, and Zucker refused to meet with the Committees.)[155] According to Hakim, Zucker reported that he looked at the North family structure to see if there would be a legal way to pass money, but was unable to identify a family member to serve as the conduit.[156] Secord testified that North told him that "the trip to Philadelphia had been a waste of time and a train ticket and his wife was more confused now than she normally was."[157] North testified that Zucker's meeting with his wife focused on "a general description of my family," and that Zucker telephoned Mrs. North in June: "The lawyer called again and asked for the name of an adult executor for our family." North said he told his wife not to call back.[158]

Hakim, however, continued to pursue the matter. He testified that he "started to really focus on this" in the fall of 1986.[159] Hakim testified that Zucker came up with the idea of having a client of his, a real estate developer, employ Mrs. North. Hakim stated that he told Zucker, "if the guy doesn't have an opening, cannot pay for it, we will pay for it. In other words we [would have] paid the guy to pay her so she would work."[160] In September, Zucker called a Washington lawyer, David Lewis. Lewis testified that he visited Zucker in Geneva on October 10, 1986. Zucker asked Lewis if he had a client who could pass money to the wife of a White House official disguised as compensation for her services in a real estate transaction. The money, Zucker explained, was due her husband. The husband's name, to the best of Lewis' recollection, was Lt. Col. North.[161] Zucker said that Lewis' client would be reimbursed through a Swiss account, or any other account in the world.[162] Lewis demurred. He reported this attempt to the Committees and the Independent Counsel in February 1987 after he realized the significance of the conversation. Secord testified that he knew nothing about this effort.[163]

No money, so far as the Committees can determine, was ever passed to the Norths by Zucker or Hakim. $15,000 was transferred, however, to STTGI on May 5, 1986. The transmittal instructions contained the notation, in Zucker's writing, "Mrs. Bellybutton."[164]

There is no evidence that North knew of the effort to pass money to his family through Lewis. Hakim stated, "I put a wheel into motion and then if North's family wanted to open the door . . . they could. If they wanted to close the door . . . they also could do that."[165]

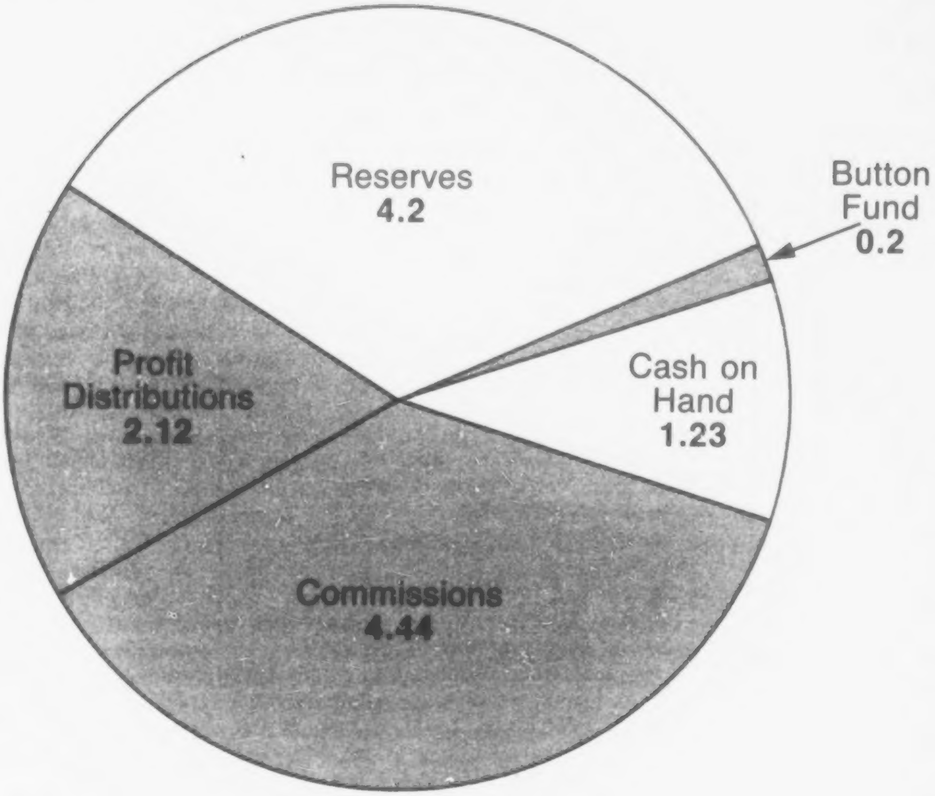
The Surplus

The $12.2 million in Enterprise surplus was distributed in a number of ways. (See Figure 22-5, Breakdown of $12.2 million surplus). The CSF ledgers indicate that Secord, Hakim, and Clines took part of the

Figure 22-5.

Breakdown of $12.19 Million Surplus

(in millions)



Source: Compagnie de Services Fiduciaires ledgers.

surplus as commissions on arms sales to the Contras. But Secord and Hakim did not stop with the self-determined commissions. The ledgers also indicate that they took part of the $12.2 million as seed money for risky personal business ventures, for personal expenditures, and for the Button fund. Finally, Secord and Hakim transferred part of the surplus to CSF to be held as Reserves for future projects by Hakim, Secord, and North.

The Commissions

Approximately $4.4 million of the Enterprise profits went to Secord, Hakim, and Clines as commissions on arms sales to the Contras and the CIA—even though North testified that he did not intend to make anyone a rich man from the sales.[166] Apparently, Secord and Hakim never negotiated with Calero[167] or anyone else for these commissions; they simply took what they wanted out of the general pool of money in the Enterprise accounts. Hakim described the basic arrangement in his testimony as follows:

> Q: Your gross income comes from third parties, contributions from third countries, private contributions, profits on the sale of arms to Iran.
>
> So really as far as the profit that you take or the leftover in the enterprise you really negotiate with yourself as to the amount of profits, do you not?
>
> A: That is correct.
>
> Q: And that makes it very flexible for you as to whether or not you want to claim 75 percent or 50 percent or 30 percent, isn't that basically the situation?
>
> A: You are correct, sir. . . .
>
> Q: You simply negotiate with yourself?
>
> A: Yes.[168]

As noted, Secord described each arms shipment as a separate phase, Phases I-VII. The final shipment for the Contras, purchased in August of 1986, never made it to the Contras and thus Secord did not describe it as a "Phase"; here, it is referred to as the Stranded Shipment.[169]

The CSF ledgers indicate that on Phases I through IV, Secord and Hakim allocated themselves and Clines a total of approximately $2.7 million, equal to 31.6 percent of the cost of the arms alone and 28.7 percent of the cost of arms including delivery.[170]

Calero testified that he received the impression from Secord that there were no such commissions, and considered it a "revelation" when he heard Secord testify.[171] North testified that under Casey's plan those involved in the Enterprise were entitled to "reasonable compensation."[172]

On Phases V through VII and the stranded shipment, once again, Secord and Hakim allocated commissions to themselves and Tom Clines from funds in the Enterprise accounts. The CSF ledgers indicate that the commissions totalled $1.7 million, which was equal to 56 percent of the cost of the arms alone and 49 percent of the cost of arms and delivery to Central America.[173]

Secord testified that the Enterprise's mark up on its arms sales to the Contras, excluding transportation, ranged between 20 and 30 percent and "averaged out almost exactly to 20 percent."[174] According to CSF ledgers, the commissions on all the arms purchased for the Contras averaged 38 percent when transportation costs are excluded.[175]

Table 22-4 shows the mark-up on arms shipments to the Contras.

Table 22-4.—Mark-up on Arms Purchased for Contras According to CSF Ledgers

Phase	Cost of arms	Cost of transportation	Related delivery costs[1]	Total costs	Total commissions per ledger	Commissions as a percent of total cost	Commissions as a percent of arms cost
I-III[2]	$6,491,159	$566,385	$98,100	$7,155,644	$2,446,493	34.19	37.69
IV	2,044,258	118,500	73,220	2,235,978	252,000	11.27	12.31
Total Phases I-IV	8,535,417	684,885	171,320	9,391,622	2,698,493	28.73	31.62
V	222,003	121,000	10,000	353,003	345,000	97.73	155.40
VI	229,279	120,000	66,780	416,059	229,303	55.11	100.01
VII	413,158	0	142,127	555,285	301,168	54.24	72.89
Stranded shipment	2,227,001	0	0	2,227,001	861,327	38.68	38.68
Post phase IV	3,091,441	241,000	218,907	3,551,348	1,736,798	48.91	56.18
Grand total	11,626,858	925,885	390,227	12,942,970	4,435,291	34.27	38.15

[1] Related Transportation Costs includes 'bonuses' paid to Quintero, for assistance on arms deliveries and other miscellaneous expenses. SC4103. Secord Test. 5/5/87 at 54.

[2] The commissions paid on phases I-III were in lump sums for all three phases and cannot be accurately allocated to the individual phases.

Source: CSF Ledgers, bank documents, and information provided by Secord and Hakim.

Hakim arranged for several commissions and profit distributions to be made through an off-the-chart company, Defex SA, which did not appear on the CSF chart in North's safe. The choice of name was not random. Defex (Portugal) was a major arms dealer from whom the Enterprise bought weapons. Defex SA was owned by the Enterprise and, according to Hakim and Secord, had no connection with Defex (Portugal). Hakim testified that when he transferred funds to Defex SA, "people" would think that the funds were being used to purchase arms from Defex (Portugal).[176] Secord testified that Defex SA was a "cover mechanism" set up by Hakim to disguise the source of money paid to arms dealers.[177]

Hakim could not remember exactly whom he was trying to confuse—maybe Eastern bloc arms dealers, he suggested. The ledgers indicated that one of the main uses of Defex SA was for distributing profits. Often, commissions were moved into the Defex SA account, creating wire records and ledger entries that looked like payments to Defex. Then the profits were wired out of Defex SA to members of the Enterprise.[178]

The final commission distribution was for the "stranded shipment." In August 1986, the restrictions of the Boland Amendment were about to be lifted and the CIA was to resume its role as arms supplier to the Contras. Hakim and Clines decided that they should have one last distribution. They made it a large one. The purchase price of the weapons was about $2.2 million.[179] The weapons were purchased, but delivery to the Contras was never completed. Hence, the weapons were known as the "stranded shipment" and were ultimately sold for a $1 million loss to an intermediary who later sold the weapons to the CIA.[180]

But the loss was not limited to $1 million. Hakim testified that he and Clines proposed that the group reward itself for their work with a fee of $861,327, which is equal to 39 percent of the cost of the weapons. According to Hakim, Secord approved the commission and the division of profits among the group. The profits were split on a 30/30/30/10 basis: $258,398 each to Hakim, Korel Assets, and Clines, and $86,133 to Scitech.[181]

Table 22-5 shows who received the commissions.

Table 22-5.—Commissions on Arms Sales to Contras

Phase	Date of Distribution from Enterprise	Hakim	Korel	C-Tea	STTGI and SciTech [1]	Profit Ratio	Total Commissions per ledgers	Total Commissions per Secord and Hakim
I-III [2]	2/85-12/85*	$779,691	$814,793	$507,090	$344.919	32/33/21/14	$2,446,493	$2,239.114
IV [3]	12/17/85	100,800	100,800	50,400		40/40/20/ 0	252,000	252,000
V [4]	2/7/86	165,000	165,000	15,000		48/48/ 4/ 0	345,000	150,000
VI(a) [5]	4/22/86 **	50,000	50,000	25,000	16,000	35/35/18/11	141,000	0
VI(b)	5/20/86	26,490	26,490	26,490	8,833	30/30/30/10	88,303	88,303
VII(a) [6]	6/3/86 **	79,167	79,167	79,167	26,390	30/30/30/10	263,891	263,891
VII(b)	6/20/86 **	11,183	11,183	11,183	3,728	30/30/30/10	37,277	37,277
Subtotal		1,212,331	1,247,433	714,330	399,870	34/35/20/11	3,573,964	3,030,585
Stranded shipment [7]	8/27/86 **	258,398	258,398	258,398	86,133	30/30/30/10	861,327	861,327
Total		1,470,729	1,505,831	972,728	486,003	33/34/22/11	4,435,291	3,891,912

[1] 50/50 Secord/Hakim companies.

[2] Profit distributions for Phases I-III were paid in lump sums and cannot be accurately divided among phases. Shown here is the total sum of money distributed to Korel, Hakim, C. Tea, and STTGI/Scitech during the period from February 1985 to mid-December 1985. That sum falls into the 40/40/20 ratio described by Secord (when the Scitech/STTGI share is divided among Secord and Hakim), and is substantially verified by Secords's estimated total profit for Phases I-III ($2,239,114). The last distribution for this period, which went to Hakim, was paid on 12/17/85; the CSF ledger entry for this 12/17/85 distribution reads "Bal. Acc. Phases I-II-III".

[3] Secord described the Phase IV profit as an December shipment with a total profit of $252,000; accordingly, the May 20, 1986, distribution which totaled $252,000 has been allocated to Phase IV.

[4] Hakim testified that the February 7, distribution was a profit distribution (Hakim, Dep. 5/22/87, at 122-24). The Committees have allocated the February 7, 1986, distribution to Phase V by process of elimination—all of the other distributions fit with other phases.

[5] Secord described Phase VI as an April shipment with a total profit of $88,303. Thus, the May 20, 1986, distribution which totaled $88,303 has been allocated to Phase VI. The Committees have assumed that the April 22, distribution was a profit distribution because it fails into a 40/40/20 ratio described by Secord (when the STTGI/Scitech share is allocated equally among Korel and Hakim). The Committees have assumed that the April 22, 1986, distribution was part of the Phase VI profit because the distribution occurred in April (the date of the shipment, according to Secord).

[6] Secord reported a total profit of $301,194 on Phase VII (a May shipment according to Secord). Since the June 3, 1986, and June 20, 1986 distribution total this amount, they have been categorized as Phase VII shipments.

[7] Secord did not report the amount of profit for the stranded shipment; however, Hakim was shown the ledgers and stated that the August 27, 1986, profit distribution was for work done on the Stranded Shipment.

* Defex, S.A. was used for one of the transfers, $522,820 on 7/24/87, to Korel.

** Defex, S.A. was used for these distributions.,

Source: CSF Ledgers, bank documents, and information provided by Secord and Hakim.

In most cases, the CSF Capital Ledgers did not specifically identify the reasons for particular distributions. The ledgers simply tracked the distribution of money in Enterprise accounts to Secord, Hakim, Clines, and other persons. A total of $6.6 million was distributed to Secord, Hakim, and Clines, while Table

22-5 shows only $4.4 million in commissions. The difference is additional profit distributions which Secord and Hakim took from Enterprise accounts for business ventures and personal use. To distinguish commission withdrawals from personal and business venture withdrawals, the Committees relied on a number of factors, including notations in the ledgers, Hakim's testimony, information provided by Secord, and a careful analysis of distributions.[182]

Other Profit Distributions[183]

In addition to commissions, the partners took more than $2.1 million in profit distributions from the Enterprise accounts. Apparently, $420,000 of this money was used by Secord, Hakim, and Clines for personal and other purposes. The balance, approximately $1.7 million, was invested in a variety of business ventures.[184]

While most of these business ventures had no connection to the Enterprise, one venture involved proposed sales of military equipment to the Contras and another contemplated sales of military equipment to the Iranians. Zucker played an active role in the ventures as an adviser.[185] In at least one case, he was also a potential partner. This section describes these business ventures in greater detail.

A. Tri-American Partnership[186]

In the spring of 1986, $150,000 was transferred from Albon Values to Tri-American Arms, a partnership among Secord (representing Hakim's interest as well as his own), Larry Royer, and Dan Marostica.[187] Secord and Hakim each participated in the development of ambitious plans for Tri-American.[188]

Initially, they planned four projects requiring several million dollars in venture capital. They included the manufacture of submachine guns, a biotechnology speculation, a real estate investment, and the "bulk manufacturing of opium alkaloids."[189]

To explain the source of the venture capital, Hakim and Secord put out a cover story—an organization called the Arab Development Project would be backing Stanford Technology Trading Group in the ventures. In fact, as Hakim testified, the funds were to come out of the Enterprise.[190]

Royer and Marostica testified that the initial phase of the machine gun project called for manufacturing 4,000 guns for the Contras; the projected cost of the weapons was $3 million and the projected profit to Tri-American was $4.2 million.[191] Secord flatly denied, however, that one of the purposes of Tri-American was to sell weapons to the Contras.[192]

The real estate investment involved the purchase of timber property in the Northwest. After cutting Marostica out, Secord, Hakim, and Royer pursued the project through a company bearing the initials of their last names, SRH, Inc. According to Royer, the project called for purchasing land for $5.7 million and a $1 million down payment to obtain financing for the purchase. In addition, Royer stated that the project required $5 million in working capital.[193] Hakim testified that CSF was planning to extend a multimillion dollar loan to SRH, Inc., for the project—and that the loan was to be collateralized by Enterprise funds. The project was abandoned after the Iran-Contra story appeared in the press.[194]

B. Stanford Technology Trading Group, Inc.

Secord and Hakim ran a great deal of their business activities out of the offices of Stanford Technology Trading Group, their jointly-owned company. As noted, Hakim and Secord founded the company with the purpose of developing security contracts in foreign countries. They did not have much success. The Enterprise supported the entire budget of the company, which ran up bills (including salary) of more than $500,000 from the summer of 1984 to the fall of 1986. A total of $582,206 (including commissions of $214,000 and $50,000 for the laser sight described below) was distributed from the Enterprise's operating accounts to Stanford Technology Trading Group from February 1985 through November 1986.[195] Secord drew a salary of $6,000 a month, Hakim drew $5,000 a month, Dutton received $3,283 a month, and rent was $3,868 a month.[196] Keith Phillips, whom Secord hired to pursue security contracts in Saudi Arabia, received $37,000 from Enterprise accounts.[197]

Secord acknowledged that Stanford Technology Trading Group received approximately $400,000 to $500,000 from Switzerland, but claimed that these were loans from CSF arranged by Hakim.[198] Hakim testified that disbursements to Stanford Technology Trading Group started out as loans from CSF but that the loans were repaid by the Enterprise; in effect, "money was pumped from the Enterprise into STTGI."[199]

C. The Scitech Fund

Hakim described Scitech as an offshore company that would use its capital to further Secord/Hakim business projects.[200] CSF held a fiduciary fund for Scitech with $271,984 from commissions on arms sales and an additional $250,000 from Enterprise accounts.[201] A $100,000 down payment for the SRH, Inc., real estate deal came from the Scitech fund.[202]

D. Laser Sight

In the fall of 1986, Hakim, apparently with Secord's assistance, attempted to market a laser night-vision sight for military use. Hakim approached Forways, Inc., a manufacturer of military spare parts, to see if the company could produce the sight. Zucker, a 25 percent owner of Forways, had brought Forways to Secord's attention as early as June of 1984. In August of 1986, after a Hakim visit to Forways for a demonstration of the laser sight, the Enterprise wired $50,000 as "seed money" to Forways for the manufacture of the sights. But the money was not used by Forways. Instead, it was immediately sent to Stanford Technology Trading Group.[203]

E. Forways

Throughout 1986, Zucker experienced problems with one of his Forways partners, Jacob Farber.[204] According to Hakim, in the fall of 1986, he and Secord made plans to purchase most of Farber's interest in Forways so that they would obtain a one-third interest in the company. At the same time, as negotiations were ongoing with the Second Channel, Hakim gave a set of Forways catalogues to the Second Channel negotiators and told them "once things get going, then we will be able to sell directly from Forways."[205] Hakim denied that he mentioned any specific product.[206] The records of Forways show that from the fall of 1985 through the fall of 1986, the company attempted to buy—and apparently succeeded in some cases—quantities of HAWK spares parts in Europe.[207]

In early October, Farber sold his shares to Zucker for $750,000. Shortly thereafter, Zucker wrote a memorandum to the officers of Forways stating that Secord and Hakim would probably buy the bulk of the Farber shares, thereby obtaining a one-third interest in Forways. Zucker also stated in the memorandum that he expected Forways to have record-breaking sales and profits in the coming year—at levels inconceivable to the new officers of Forways.[208]

In early November, $760,000 of Enterprise money was apparently transferred to CSF: on November 5, 1986, $500,000 moved out of Hakim's fiduciary fund to an unknown location and, on November 10, 1986, $260,000 moved out of one of the operational companies to an unknown location. The $500,000 block of funds had been previously earmarked for a joint Hakim/Secord investment. The $260,000 transfer was recorded in the ledgers with the notation "CSF Invest.—Forways."[209]

Hakim denied that the Secord-Hakim purchase of the Farber shares was ever completed, and in March of 1987, Zucker wrote a note to an officer and director of Forways indicating that after the Iran/Contra story broke, he stopped the Hakim-Secord part of the transaction.[210] However, there is no record of the $760,000 ever being returned to the Enterprise or any of the fiduciary funds.

F. The Iranian Market

The amounts distributed to Hakim and Secord do not tell the full story of their ambitions, which Hakim made no effort to hide. Hakim saw the Iranian market as providing spectacular opportunities for wealth. He testified that he hoped to obtain for Secord and himself at least a 3 percent share of the annual $15 billion Iranian market if commercial relations with the United States could be renewed. By using money from the Enterprise, including the reserves to "grease" the way with the Second Channel, and by proposing compromises to North and Iran, Hakim was not only promoting a solution to the impasse over the hostages, but also pursuing his and Secord's own commercial interests. The ultimate goal, as Hakim admitted, was not the millions he actually took from the Enterprise during 1985 and 1986, but the $15 billion-a-year Iranian market.[211]

The Reserves

The Enterprise transferred $4.2 million to CSF to be held in three fiduciary accounts referred to as the "Reserves."[212] A large part of the Reserve monies appear to have come from the proceeds of the Iranian arms sales.

According to the CSF fiduciary agreements, Hakim was the owner of the Reserves; Secord testified, however, that the Enterprise was the beneficial owner of the Reserves and Hakim acknowledged that the Reserves were treated as the Enterprise's money.[213] Table 22-6, Distributions to Reserves, shows the amount of each Reserve, the operational company from which the monies were taken, and the date each Reserve was established.

Table 22-6.—Distributions to Reserves[214]

Reserve	Date	Amount	Source
Reserve 1	3/05/86	$2,000,000	Gulf Marketing
Reserve 2	6/18/86	2,000,000	Hyde Park
Reserve 3	6/18/86	200,000	Hyde Park

[214] Based upon CSF Ledgers.

Hakim testified that Reserve 2, containing $2,000,000, was to be used to pay money to persons associated with the Second Channel. According to Hakim, if the Second Channel initiative was successful, the money was to be invested for those persons in the joint Iranian-U.S. venture which was being planned; if the Second Channel was unsuccessful, it would be used as baksheesh.[215] Reserve 1, containing an additional $2,000,000, was to be used for any purpose, including "operational purposes."[216]

The CSF fiduciary agreement governing Reserve 1—the one for covert operations—provided that should Hakim die, Secord would have direct control over it and should Secord die, North would have direct control. Should North die, the remaining portion of the Reserve would be divided equally among the estates of all three men. The instructions to CSF were irrevocable without the consent of all the beneficiaries.[217] Hakim said that in setting up Reserve 1, he simply followed the structure of the Enterprise from top to bottom as he understood it—with North on the top.[218]

The CSF fiduciary agreement governing Reserve 2—dedicated to the commercial venture with the Iranians—provided that upon the death of Hakim, Secord would control the Reserve, and if Secord should die, the remaining portion of the Reserve would be divided among the estates of Hakim and Secord. Again, the instructions to CSF were irrevocable without the consent of Secord.[219]

Initially, Secord testified that the two $2,000,000 Reserves established as insurance for Israeli aircraft were largely restricted to that use.[220] In fact, the Israelis did demand a guarantee against loss of $2 million for each airplane used in the Iranian arms transfers—a guarantee which was explicitly released on August 3, 1986.[221] Later, Secord indicated that the Reserves were used for all of the Enterprise's operations. One of the continuing operations named by Secord was "a joint Iranian-American commercial venture."[222]

North testified that he specifically requested that some Reserve funds be put aside for a number of special activities.[223] Those activities included recovering military equipment, setting up a propaganda operation in foreign countries, and influencing domestic politics in foreign countries.[224]

Secord and North testified briefly about the origin of the Hakim "wills"—the provisions for continuing control over the Reserves in the event of Hakim's death. Secord told the Committees that he knew Hakim had made arrangements to cover a catastrophe but professed ignorance of the details.[225] North claimed to have been totally in the dark as to the arrangements. He noted, however, that at one point he asked Secord what would happen to the money if "both you guys go down on some airplane flight." According to North, Secord responded, "Don't worry, arrangements will be made so that these operations can continue."[226] Hakim claimed that he told North that if he, Hakim, died, North would be in total control.[227]

Neither Secord nor Hakim had a clear recollection of the purpose of Reserve 3 containing $200,000. Hakim suggested that it might have been set up to cover "death benefits" for those working on the resupply operation, or as a set aside for a Secord-Hakim business venture. Secord remembered setting aside $200,000 for death benefits. He insisted, however, that there was only one such fund and it was converted into the Button fund. The purpose of Reserve 3 remains a mystery.[228]

Section 6: Where Is The Money Now[229]

The Enterprise generated a surplus of $12.2 million. Some of this surplus went directly to Secord, Clines, and Hakim. Substantial funds, $7.8 million, however, remained under management in Switzerland when the Enterprise ceased its operations. This money was apparently frozen by Swiss authorities at the request of the Justice Department.

Of the $7.8 million, approximately $2 million is held in CSF fiduciary accounts for the benefit of Hakim, Korel Assets and Scitech. Approximately $200,000 remains in the Button account and another $4.2 million is held as reserves for the Enterprise by CSF. The balance, $1.2 million, is in the Enterprise's Swiss bank accounts, unallocated for any purpose. Table 22-7 shows the location of the $7.8 million.

Table 22-7.—Individuals and Entities that Control Unspent Enterprise Funds

Description	Transferred from Enterprise	Investment Income	Withdrawals	Balance 12-31-86	Total
Cash in Enterprise Companies				$1,227,173	$1,227,173
Reserves Held by CSF:					
Reserve 1	$2,000,000	144,398	15,246[1]	2,129,152	
Reserve 2	2,000,000	75,583	23,673[1]	2,051,909	
Reserve 3	200,000	7,915	50,769[2]	157,146	4,338,207
CSF Fiduciary Funds:					
Hakim	1,613,649	301,743[3]	1,655,799[4]	259,593	
Button	200,000	14,330	2,339[1]	211,991	
Korel	1,434,121	218,192	105,278[5]	1,547,035	
Sci Tech	458,424	34,535	302,822[6]	190,137	2,208,756
Total[7]					7,774,136

[1] CSF management fees.

[2] CSF management fees and a transfer to Sharp, Green, and Lankford.

[3] Generally, all funds transferred to CSF came from Enterprise accounts. One notable exception was $258,300 transferred by Hakim from his California bank account on May 29, 1986, to his CSF fiduciary account to repay a CSF loan. These funds are included in Hakim's income amount.

[4] Traced, for the most part, to Hakim's U.S. bank accounts and Hakim projects.

[5] Traced to Secord's bank account and payments made for Secord's bills.

[6] Traced, for the most part, to Secord/Hakim business ventures.

[7] CSF records indicate that, as of 12-31-86, all of the money was held for CSF by Merrill, Lynch, Pierce, Fenner, and Smith, Inc. (Geneva office).

Source: CSF Ledgers, H6363A.

The participants have different ideas of what should happen to the money. Secord testified that the money belongs to the Enterprise and that is up to Hakim, as the owner of the Enterprise, to decide what to do with it. He would recommend to Hakim that the money, after expenses, be donated to the William Casey Fund for the support of the Contras.[230]

Likewise, North testified that he would send "that money, every nickel of it, to the Nicaraguan Resistance, which was indeed the original purpose of setting up all those non-U.S. government entities."[231]

Hakim said that he was entitled to, and promised a substantial interest in, the Enterprise funds.[232] Hakim recognized that North's view of who owned the funds differed from his but realized he would benefit either way—either he would profit from opening the trade door to Iran, or he would fight North for a share of the money. Hakim declared that if the United States had tried to end the Iran initiative, "I guarantee you that I would have put up a big fight to get as much as I could from that money before letting it go."[233] Hakim also testified that "obligations" were still outstanding to the Iranians who helped open the Second Channel.[234]

Section 7: Brunei Contribution

If not for a typographical error, the Enterprise would have received an additional $10 million generated by U.S. Government efforts: the misdirected contribution from the Sultan of Brunei.

In December 1985, Congress amended Boland to provide explicitly that solicitation by the State Department of humanitarian aid for the Contras from third countries was not precluded. Solicitation of lethal assistance was not addressed.[235] The National Security Planning Group decided to pursue such third-country funding at a meeting with the President on May 16, 1986. These funds would bridge the gap until the anticipated resumption of U.S. aid in the fall.[236]

The Administration estimated that the earliest that aid could be made available to the Contras through the normal appropriations channels was August or September 1986. In the face of continued House opposition and the likelihood of a filibuster in the Senate, Secretary Shultz advocated seeking aid from third countries as the course of least resistance. He believed that it was highly improbable that Congress would support a reprogramming of some money from the Department of Defense for non-military aid to the Contras and he argued that it would be desirable to approach other countries.[237] Secretary Shultz was asked to draw up a list of possible donors.[238]

In discussions at the State Department following the National Security Planning Group meeting, Secretary Shultz ruled out any countries receiving U.S. aid or whose political relationship with the United States was otherwise delicate. The Secretary's criteria eliminated all the obvious candidates, including nations in the Middle East.[239] In early June, Assistant Secretary Elliott Abrams recommended the Sultanate of Brunei—a tiny, oil-rich nation on the northwest coast of Borneo—and the Department agreed.[240] Abrams described how the selection was made:

> Take a list of countries in the world and exclude those with insufficient resources to make a humanitarian contribution. Exclude further those which are right-wing dictatorships, or which are, if you will, on the other side, allied with the Soviet Union. Then exclude those . . . over which we can be said to have some leverage. You are left essentially with oil producers. Then look for non-Arab—since I had been to Ambassador Murphy already, non-Middle East non-Arab oil producers. Venezuela, I thought, would not do this. You are down to Brunei.[241]

Since Secretary Shultz planned to travel to Asia in June 1986, Abrams was tasked with getting an appropriate account number in the event of a successful solicitation of Brunei for a contribution to the Contras. Abrams approached North, who, with Poindexter's concurrence, gave Abrams the number of the Enterprise's Lake Resources account in Switzerland. Abrams was not told that this was an account controlled by North, Hakim, and Secord for disbursing lethal (not humanitarian) aid to the Contras.[242]

But either North or his secretary made a mistake. In writing down the account number or in typing it, North or his secretary apparently inverted the first two digits, so that the correct account number at Credit Suisse, *386*-430-22-1, became *368*-430-22-1.[243] North gave Abrams a typed card containing the erroneous number and Abrams gave it to the Secretary of State.[244] The Secretary of State was informed by Abrams that the account belonged to the Contras; Abrams said he had received that information from North.[245]

The State Department then decided that Brunei would not be approached during the Secretary's June trip, although the Secretary carried with him to Asia the card containing the wrong number.[246]

On August 5, Secretary Shultz directed Abrams to make contact with Brunei.[247] Around this time, Abrams obtained a second account number from the Chief of the CIA Central American Task Force.[248] Abrams could not explain why he asked for this second account number.[249] But once he obtained it, he had the problem of deciding which account to use, the one provided by the CIA or North. Charles Hill, Secretary Shultz's Executive Assistant, recommended that Abrams use the number from North because it probably was cleaner.[250] Ironically, the account Abrams received from the CIA was a Contra account established specifically to receive the expected contribution. Had that account been used, the Contras would have received an additional $10 million.

Abrams, carrying North's account number and using the cover name "Mr. Kenilworth," met with an official of Brunei in London on August 9, 1986, and successfully solicited a $10 million contribution for humanitarian aid. Abrams gave the Bruneian official the Swiss account number from North.[251]

On September 15, Brunei confirmed to the State Department that "arrangements have been consummated."[252] But North advised Abrams three days later that no funds had been received.[253] The State Department went back to Brunei and was told that transferring the funds would require the U.S. to "wait for a short while before the transaction is completed."[254]

By November, the funds still had not arrived in the Lake Resources account. This remained true as of November 25, when the Attorney General announced discovery of the diversion. On December 1, Secretary Shultz instructed Charles Hill to brief the State Department's Legal Adviser, Abraham Sofaer, on the circumstances surrounding the solicitation. According to Sofaer, this was the first time he learned about the Brunei contribution.[255]

When he was informed of the Brunei contribution, Sofaer directed the U.S. Ambassador to advise the Brunei Government that if the funds were still under its control, they should be frozen.[256] But on December 4, 1986, Brunei informed the State Department that it had sent the funds to the designated account in August and could not withdraw the transfer. Sofaer testified that on December 4, he received the approval of officials at the Justice Department and the White House to approach the Swiss Ambassador in Washington with a request that all accounts related to Lake Resources and Oliver North be frozen. Simultaneously, he ordered a cable sent to the U.S. Ambassador in Switzerland instructing that the same request be made. The request became effective the following morning.[257] The problem, however, was that nobody in Washington—not even Oliver North—knew where the Brunei funds had gone. A diplomatic coup had become a diplomatic fiasco. The fiasco continued into 1987.

With the assistance of Swiss authorities aided by the State Department, the Committees determined that the Brunei funds had ended up in the Credit Suisse account of a person described by the Swiss as a wealthy Swiss businessman involved in the shipping business who alleged that the $10 million flowed into his account in connection with a shipping transaction. The account-holder had withdrawn the $10 million transfer shortly after it arrived at Credit Suisse and placed it in a certificate of deposit at another Swiss bank in Geneva, where it had been collecting interest.[258]

In May 1987, the matter was placed in the hands of a Swiss Magistrate, who, with the Committees' encouragement, froze the certificate of deposit. The Government of Brunei was notified by the State Department and asserted its claim. The Committees understand that, as of this writing, the $10 million has been returned to Brunei, but the interest remains frozen.

Swiss authorities have declined to reveal the identity of the individual who received the funds. The Committees were assured by the Swiss Magistrate, however, that the individual is neither a principal in the investigation, nor related to any of the principals.

Chapter 22

1. Hakim Dep., 5/22/87, at 66; Secord Test., *Hearings*, 100-1, 5/7/87, at 166-67. CSF was established in September 1971. According to a report by Credit Suisse dated October 14, 1985, the wife of Willard Zucker holds all of the capital shares. The Credit Suisse report also states: "The company's goal is to give all advice on fiscal, financial, judicial and economic matters and handle all financial goods of the customer . . . The company would also take part or participate in any financial and real estate actions or enterprises." Among the officers of CSF are: Jean De Senarclens, Alfred Stohler, Willard Zucker and Roland Farina. CSF Investments, Ltd, a Bermuda Co. is an affiliate. EN 36-38.

2. Zucker, living in Switzerland under the protections and obligations of Swiss secrecy law, refused to talk to the Committees.

3. The Lake account provides an example. CSF established the "Lake" bank account with a Swiss bank on July 19, 1985. The account was opened in the name of Lake Resources Inc. Lake Resources Inc. was incorporated in Panama on May 14, 1985. The initial officers were three Swiss citizens associated with CSF. Thus, Lake Resources could perform all the functions of a corporation without giving any indication of its true owners. Summary of CSF Incorporation Records, 10/12/87, H6942-56. Even the names of the shareholders were protected. Apparently, CSF typically held the shares of the companies it manages pursuant to a written agreement with the true owner. Summary of CSF Incorporation Records, H6954.

4. Hakim Dep., 5/22/87, at 65; Wood Int., 8/12/87; Castells Int., 8/28/87; Memorandum from Zucker stating "[CSF's] association with STTGI, its associated and predecessor companies, dates back to 1971." STG9141.

5. Clark and Zink Dep., 7/6/87, at 29-34, 83. Through a brochure, STTGI claimed that it had a European office and that it could provide the type of services that CSF offered. In fact, the office address, telephone number, and telex number for the European office were CSF's and the services offered appear to have been CSF's too, STGI34452-53.

6. Hakim Dep., 5/23/87, at 97-99, 239; Secord memorandum to Zucker, Subj: movement of funds, H1670; Secord Dep., 6/10/87, at 76. The STTGI phone records show calls to CSF which correspond with the movements of Enterprise funds through the CSF-managed Swiss accounts. Staff Memorandum Summarizing STTGI Phone Records, 10/6/87, EN73-96.

7. The Enterprise did not use conventional checks. If checks were required, wire transfers were made from the Enterprise network of accounts to a CSF account which in turn issued a check in CSF's name to the payee. See, e.g., Robinette Test., *Hearings*, 100-6, 6/23/87, at 12. The records supplied by Hakim indicate that CSF had bank accounts in the United States, Bermuda, Paris, and Brussels, and that CSF also held accounts in brokerage firms in several countries. CSF's account in the U.S. was maintained at Republic Bank of New York.

8. Hakim indicated that on three occasions he was involved in arrangements to pick up sums of $50,000 in cash in New York which he brought to Secord. Hakim was under the impression that Secord routed the money onward to the Contras. Hakim Dep., 5/23/87, at 166-67. Two Zucker business associates have indicated, through their lawyers, that Zucker arranged for them to drop off Contra-bound cash in amounts of $50,000 to Hakim, and a Hakim courier. Staff Memorandum on Zucker Cash Operations, 8/13/87, EN56-68. Hakim also utilized his own sources. For example, Owen testified that he picked up cash from a store owner in New York which apparently was for the Contras. Owen, Test., *Hearings*, 100-2, 5/19/87, at 353. The store owner, who Hakim said was a friend of his, was reimbursed through a CSF check. Hakim Dep., 5/23/87, at 149. CRF 5123. Staff Memorandum, Subj: Owen Cash Pick Up, 10/19/87, EN54.

9. Summary of CSF Ledger entries, wire records, bank statements and credit advices, H6338-62. Hakim failed to provide a complete set of invoices from arms dealers, making it difficult to determine whether expenditures shown on the bank account statements -- and accounted for in the ledgers as weapons purchases -- were actually for weapons. Secord said he shredded some telexes related to Defex transactions sometime in November of 1986 as a security procedure. Secord Test., *Hearings*, 100-1, 5/7/87, at 197.

10. General Ledger, H972-1145; Capital Ledger, H958-71; Fiduciary Ledger, H02756-3132.

11. Hakim Dep., 5/23/87, at 88-89; Secord Test., *Hearings*, 100-1, 5/7/87, at 157. Zucker memorandums, H1779, H1780.

12. North Test., *Hearings*, 100-7, 7/10/87, at 3.

13. Energy Resources International SA (administered by CSF) was incorporated on July 24, 1978 in Panama and apparently inactive until it was used by the Enterprise. The company's first bank account was opened on December 21, 1985 at Credit Suisse; the second account was opened on March 13, 1985, at Banco Portuguese in London; and the third account on April 19, 1985, at Banque Suisse. The Committees did not receive bank records for the accounts at Banco Portuguese and Banque Suisse. Summary of Incorporation Records, H6942-56.

14. Summary of Incorporation Records prepared by Committee staff, H6942-5.

15. North Test., *Hearings*, 100-7, 7/10/87, at 314-15.

16. Hakim Dep., 5/22/87, at 114-15.

17. *Id.* at 86, 93-94.

18. *Id.* at 92.

19. *Id.* at 110.

20. *Id.* at 98-99.

21. Hakim Dep., 5/22/87, at 116.

22. As of December 31, 1984, CSF Investment managed assets of more than $31 million, CRF2215-18.

23. With respect to expenditures and financial data, the summary provided below is based on an analysis of portions of the CSF General Ledger, H983-H1044.

24. Lake became active in the summer and fall of 1986. The active Energy bank account was closed in October, 1985.

25. Hakim Dep., 5/22/87, at 93-94. Gulf Marketing Consultants, Ltd. was incorporated in Liberia on May 15, 1985. It opened two bank accounts at Swiss banks on August 28, 1985 and February 17, 1986. The Committees only received records for the account maintained at Credit Suisse. Summary of Incorporation Records prepared by Committee staff, H6942-56.

26. Hakim Dep., 5/22/87, at 94.

27. Albon Values Corporation SA was incorporated on September 9, 1985, and opened a Swiss bank account on December 15, 1985. Records show Secord as a representative of the company, but do not contain his signature. Summary of CSF Incorporation Records, H6942-56.

28. Toyco SA was incorporated on April 17, 1986, in Panama. It opened a Swiss account on May 14, 1986. Summary of CSF Incorporation Records, H6942-56. Money was also withdrawn from Toyco for profit distributions.

29. Secord Test., *Hearings*, 100-1, 5/5/87, at 75. Udall Research Corporation was incorporated on May 23, 1985, in Panama and its Swiss bank account was opened on March 19, 1986. A fiduciary agreement between CSF and Hakim provides that CSF holds the shares of Udall on behalf of Hakim. Bank records show that Richard Secord is a representative of Udall. Apparently, Olmsted was given power of attorney for Udall. Summary of CSF Incorporation Records, H6942-56.

30. North, PROF Note, 9/25/86, to Poindexter, N12611. In fact, the Udall account remained open, with a balance of less than $3,000, until November 18, 1986.

31. Hyde Park was incorporated on December 15, 1983, in Liberia. It opened an account in London on June 29, 1984, at Barclays Bank; the authorized signatories were Daniel Jones and Burt Barnett. Apparently, Jones and Barnett are two California lawyers, CRF2445. Hyde Park opened a second account on March 19, 1986, with only CSF-associated individuals on the signature card. The Committees received records only for the account maintained at Credit Suisse. Summary of CSF Incorporation Records, H6942-56.

32. Ex. AH-17-21.

33. Secord Test., *Hearings*, 100-1, 5/7/87, at 200-01.

34. North Test., *Hearings*, 100-7, 7/10/87, at 2-3.

35. Hakim Test., *Hearings*, 100-5, 6/5/87, at 328-29.

36. Poindexter Dep., 5/2/87, at 382-83.

37. North Test., *Hearings*, 100-7, 7/10/87, at 294-95; Earl Dep., 5/2/87, at 31-33.

38. Secord Test., *Hearings*, 100-1, 5/7/87, at 190-91.

39. North Test., *Hearings*, 100-7, 7/14/87, at 140; Tambs Test., *Hearings*, 100-3, 5/28/87, at 382-83.

40. Hakim Dep., 5/24/87, at 44.

41. Hakim Test., *Hearings*, 100-5, 6/5/87, at 348.

42. *Id.*, at 340-41. See Chapter 23 on the *Erria* and the DEA operation.

43. See Table 22-2, Estimated Ending Monthly Cash Balances. In addition, $2.2 million of profits distributed to members of Enterprise remained in the personal fiduciary accounts of the members of the Enterprise.

44. See Hakim Dep., 5/24/87, at 44-47.

45. Secord Test., *Hearings*, 100-1, 5/7/87, at 176.

46. Nightline, Iran Contra Hearings: Secord Int., 7/9/87, at 5.

47. North Test., *Hearings*, 100-7, 7/8/87, at 122.

48. *Id.*

49. *Id.* at 73-80.

50. Calculations related to arms transactions assume that certain expenditures designated in the ledgers for arms actually were spent for that purpose and that arms purchased were sent to Calero and not resold for a profit. The evidence appears to support those assumptions. Calero did not keep an itemized record of the arms he received, but remembers receiving most of the weapons described by Secord. Calero Int., 8/12/87.

51. North Test., *Hearings*, 100-7, 7/8/87, at 122, ("there was always an intention to make this a self-sustaining operation.") See also, North Test., *Hearings*, 100-7, 7/10/87, at 3 (Casey's criteria for the off-the-shelf organization applied to the arms sales from the beginning).

52. See Table 22-1, Enterprise Income.

53. Secord letter to the Committees, SC04081-105.

54. See Table 22-4, Mark-up On Arms Purchased for Contras According to CSF Ledgers.

55. *Id.*

56. Secord Letter to the Committees, SCO4081-105.

57. See the "stranded shipment" discussion later in this chapter.

58. See Table 22-3, Enterprise Expenditures. One of the Maules was used by the Secord/Dutton resupply operation. The others were used for other Contra operations run by the Contras. Dutton Test., *Hearings*, 100-3, 5/27/87, at 213.

59. Summary of ACE transactions, H6347; Gadd Dep., 5/1/87, at 27. ACE received a total of $1.54 million and disbursed $1,096,966 to Prop Air for the purchase of the two Caribous; $230,433 to Southern Air for fuel, spare parts, and partial payment on an airplane; $144,300 to Corporate Air Services for crew; and $20,462 to others. The ACE account had a cash balance of $48,165 as of October 22, 1986. H6347.

60. See Table 22-3, Enterprise Expenditures.

61. *Id.*

62 Wire Record, H893; Ledger Record, H1073.

63. Secord Test., *Hearings*, 100-1, 5/5/87, at 60.

64. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 84.

65. North Test., Closed Session, 7/9/87, at 58; North, PROF Note, 8/23/86 at 15:52:52, to Poindexter, N12151.

66. Secord Test., *Hearings*, 100-1, 5/5/87, at 68; Hakim Dep., 5/23/87, at 185-86. Dutton recalled being told that some of his pilots had been supplied by Walker. Dutton Test., *Hearings*, 100-3, 5/27/87, at 214.

67. Wire Record, H1553; Ledger Entry, H1056. Analysis of Payments to a Contractor in a Central American Country H6345.

68. Summary of payments to Contra leaders, H6350-51.

69. North apparently discussed a plan for bounty payments of $5,000 to be paid to an FDN military commander for each captured Sandinista officer, $5,000 to be paid to each soldier who captured the officer, and $200,000 to be paid to the FDN for every five officers captured. North's notebook for October 10, 1986, states: "Calero-Bounty for Sandinista or Cuban officers-5K ea[ch] for [FDN military commander]-5K ea[ch] for soldier capturing 200K for FDN for each 5." North Notebook, 10/10/86, Q2522.

70. The description here is based upon the CSF Ledgers and supporting bank documents and is confirmed, with respect to the transfers to and from the Israeli accounts, by the Israeli Financial Chronology. See Table 22-3, Enterprise Expenditures, and supporting documentation referred to therein. See also Secord Test., *Hearings*, 100-1, at 95 (first transaction) 105-06, 178 (second transaction), 119, 180 (third transaction), 123 (fourth transaction).

71. Secord Test., *Hearings*, 100-1, 5/6/87, at 95.

72. *Id.*

73. On May 16, 1986, $225,000 was paid from the Enterprise accounts to an unknown party. The CSF Ledgers indicate that the $225,000 came from the $1,685,000 deposit.

74. According to North's notebook, North met with Secord on May 19, 1986, and informed Secord of the need

to bring $260,000 in cash to Israel. North Notebooks, 5/19/86, Q2155. Two days later, $260,000 was withdrawn from the Lake Resources account. Bank Record, H518.

75. Summary of expenditures shown in the CSF Ledgers which relate to the *Erria*. H86357-59. The cost of the ship was about $321,000. Funds distributed to the captain totalled $80,000; monthly payments for "chartering services" totalled $126,000. Ship expenses labeled crew wages were approximately $32,500. A payment for "insurance" was made on May 20, 1986, in the amount of $52,900 and other expenses totalled $131,009. *Id.* See Chapter 23 for a description of the *Erria*'s mission.

76. Bank Record, H882; Ledger entry, H1019. See Chapter 23 for a description of the DEA project.

77. Wire Record, H889; Ledger Record, H1074; Memorandum to file Subj: Motorola Interviews, 10/12/87. See also, Napier Dep., 4/10/87, at 52-53; Hakim Dep., 5/24/87, at 44; STTGI notes referring to the radios, STG5206.

78. For a description of these projects, see Chapter 23.

79. Ex. RCM-41A.

80. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 106.

81. Letter from Counsel for the Commandant of the Marine Corps, 7/9/87, NF378-79; letter from Office of the Secretary of the Navy, 7/9/87, NF380.

82. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 120. See generally New York Times, Late City Edition, 7/10/87, at A9.

83. Robinette Test., *Hearings*, 100-6, 6/23/87, at 1-8.

84. Robinette 6/23/87, at 17-26; Ex. GR-3 to GR-7D.

85. HF1365-66. At the meeting, North also said that during the installation period, he moved his family to a government base, as suggested by the FBI and Secret Service. HF1365-66.

86. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 129.

87. Nightline, Iran Contra Hearings: Secord Int., 7/9/87, at 10.

88. Robinette Test., *Hearings*, 100-6, 6/23/87, at 12.

89. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 129.

90. *Id.*

91. *Id.*, Robinette Test., Hearings, 6/23/87, at 13-15.

92. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 129; Robinette Test., *Hearings*, 100-6, 6/23/87, at 16-19.

93. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 131.

94. Washington Post, 3/17/87, at A11; Chicago Tribune, 3/18/87, at 1-2.

95. Robinette Test., *Hearings*, 100-6, 6/23/87, at 19.

96. *Id.* at 46-50.

97. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 129.

98. *Id.* at 126, 130.

99. *Id.* at 129.

100. Cash withdrawal, H518; North Notebook, 5/19/86, Q2155. For the purpose of calculating Enterprise Expenditures this $260,000 was treated as an expense related to the Iranian transactions.

101. Cash withdrawal, H107; Ledger Record, H1048.

102. Ledger entries H1075, H1093; wire records, H883, H796. Hakim testified that he thought the Codelis money was for a Secord/Hakim American Express account. Hakim Dep., 5/23/87, at 44-48. However, the Secord/Hakim American Express account was covered by Stanford Technology Services SA. See H1456.

103. Analysis of miscellaneous entries in CSF ledgers by Committee staff accountants, H6350-57. There were also a number of other miscellaneous expenditures, totalling $325,843, which occurred during 1985 and 1986, including directors fees, $65,000; bank charges, $74,715; miscellaneous legal expenses, $67,500; and various other expenditures.

104. The numerical data here are based upon analysis of the CSF Ledgers and supporting bank documents, *Id.* (In this Report, the term "diversion" refers to that portion of the surplus from the Iran arms sale that was used to pay Contra-related expenses.)

105. This $7.2 million does not include $1.2 million in commissions paid to members of the Enterprise for their work on the Contra arms shipments.

106. If the $1.2 million in commissions taken by the partners in the Enterprise are treated as a Contra expenditure, the amount of the Diversion is $5 million.

107. North Test., *Hearings*, 100-7, Part I, 7/10/87, at 294-95.

108. Secord Test., *Hearings*, 100-1, 5/6/87, at 110-11.

109. North Test., *Hearings*, 100-7, Part I, 7/10/87, at 311. In fact, the actual cash balance at that time was approximately $11.6 million. Summary of Bank Records, H8925.

110. Poindexter Test., *Hearings*, 100-8, 7/16/87, at 105.

111. Hakim Test., *Hearings*, 100-5, 6/3/87, at 194.

112. Secord Test., Hearings, 101-1, 5/7/87, at 181.

113. See Table 22-5, Commissions on Arms Sales.

114. *Id.*

115. *Id.*

116. Ex. AH-4-15. A number of distributions for Clines were also wired to CSF accounts. Ledger entries, H968. This suggests that Clines may have also had a CSF fiduciary fund.

117. Hakim Dep., 5/22/87, at 136.

118. Hakim Test., *Hearings*, 100-5, 6/3/87, at 215.

119. Hakim Dep., 5/23/87, at 41.

120. A number of C. Tea distributions have been traced directly to Clines' U.S. bank accounts. Wire transfers, H382, H332, H291.

121. Hakim Test., *Hearings*, 100-5, 6/3/87, at 215. As for the relevant records that support Hakim's claim, see the "Commissions" section. Hakim testified that Scitech's full name was Scitech Trading Group, Inc. (abbreviated "STTGI"). *Id.* at 213. Scitech Trading Group, Inc. was incorporated in Liberia on July 22, 1985. Summary of CSF Incorporation Records, H6952. The records show that Scitech received Secord/Hakim commissions in equal proportions and that expenditures made by Scitech were for Secord/Hakim business ventures. See the Commissions Section and the Other Profit Distributions Section below.

122. Hakim Test., *Hearings*, 100-5, 6/3/87, at 216.

123. *Id.*, at 213.

124. Summary of Korel Ledgers, H6368, H6341.

125. $35,000 was transferred to another individual and $28,111 went through Secord to an individual (Zucker's notes state "It $28,111 is to be a check drawn to someone designated to Nancy by RVS"). About $1,671 was transferred to Sharp, Green, and Lankford—Tom Green's law firm. $45,000 was paid to Secord's attorney, Tom Green, and $16,710 was distributed in other cash withdrawals. Summary of Korel Ledgers, H6341.

126. Secord Test., *Hearings*, 100-1, at 154-55, 165.

127. New York Times, 6/7/87, at 1, 16; Nightline, 7/9/87, at 4.

128. Hakim Test., *Hearings*, 100-5, 6/5/87, at 355. Secord stated that the money from Hakim was part of a general arrangement under which Hakim provided capital to

STTGI and Secord provided management skills. As part of the arrangement Hakim was to give Secord personal loans until STTGI showed a profit. New York Times, 6/7/87, at 16.

129. Secord Test., *Hearings*, 100-1, 5/7/87, at 155.

130. *Id.* at 156.

131. *Id.* at 155-59.

132. Hakim Dep., 5/31/87, at 50. In his public testimony, Hakim placed the date in "the first half of 1986." Hakim Test., *Hearings*, 100-5, 6/3/87, at 215-16.

133. Hakim Test., *Hearings*, 100-5, 6/3/87, at 215.

134. Hakim Dep., 5/23/87, at 121.

135. Hakim Test., *Hearings*, 100-5, 6/5/87 at 322-23; Hakim Dep., 5/23/87, at 11-12.

136. Hakim testified that he and Secord inspected the "bottom line" at CSF from time to time. Hakim last saw the records in mid-1986. Hakim Dep., 5/23/87, at 84, 87. Hakim stated, in particular, that Secord inspected the Korel and Scitech accounts. Hakim Test., *Hearings*, 100-5, 6/5/87, at 312.

137. Hakim Test., *Hearings*, 100-5, 6/3/87, at 215.

138. Case 1: Secord testified that his initial profits on arms sales totaled "several hundred thousand dollars" and were held by CSF in his name. Secord Test., *Hearings*, 100-1, 5/7/87, at 154, 164-65. The ledgers show that on 4/4/85, approximately $220,000 was transferred for "RVS" to CSF, and that in May 1986, CSF moved approximately the same sum into Korel Assets. Thus, it appears that the "RVS" marked money -- Secord's initial profits -- were moved into Korel Assets. General Ledger, H967; Fiduciary Ledger, H03076; Wire Records, H373, H372. Case 2: The bank account ledgers show a transfer marked "transfer RVS." The transfer can be traced directly to Korel Assets. Fiduciary Ledgers H3074, H03131; General Ledger, H967. Case 3: The fiduciary agreement with respect to the management of one of the $2,000,000 reserves by CSF originally read "RVS/AH." The title of the agreement was changed to "AH-1." H2723.

139. Secord did volunteer that he signed a fiduciary agreement for the management of his money with CSF. Secord Test., *Hearings*, 100-1, 5/7/87, at 154. The agreement was not produced by Hakim. Hakim Dep., 5/23/87, at 203. Secord Test., *Hearings*, 100-1, at 154. Through July 1987, Secord opposed in the Swiss courts the Independent Counsel's application for the Enterprise's financial records.

140. Capital Ledger, H970; wire transfer, H177; Fiduciary Ledger, H2933. The copy of the fiduciary agreement delivered to the Committee was never signed by the client, "B.Button". Ex. AH-26, *Hearings*, 100-1.

141. Hakim Dep., 5/22/87, at 124.

142. Q: "What does that [bellybutton] have to do with death benefits?" A: "No, you know, probably wiggle and touch somebody's bellybutton. I don't remember now. It has been such a long time." Hakim, 5/22/87, at 124. "I think it had to do with the family of the possible victims that somebody had to wiggle their bellybuttons . . . It is not referring to anyone's name . . . I said [to Zucker] somebody needs to go and wiggle the bellybutton of the families, the wife, the kids, and I said 'Button'." Hakim, 5/22/87, at 129-30.

143. Hakim Dep., 5/24/87, at 182-83, 211-15, 5/25/87, at 7.

144. Hakim Test., *Hearings*, 100-5, 6/3/87, at 217.

145. Secord Dep., 6/10/87, at 24-25. Secord's handwritten notes of the Enterprise's finances show that he began reserving, or "fencing in" $200,000 for the death benefit fund in November 1985. It appears that this fund may have been formally established as Reserve Account 3 in May. *Id.* at 24; Secord Ex. 5.

146. Secord Dep., 6/10/87, at 25, 27.

147. North Test., *Hearings*, 100-7, Part I, 7/7/87 at 45.

148. Hakim Test, *Hearings*, 100-5, 6/4/87, at 270-78, Hakim Dep., 5/24/87, at 200-03.

149. Secord Dep., 6/10/87, at 32-34.

150. *Id.* at 27.

151. *Id.* at 25-26.

152. *Id.* at 32.

153. *Id.* at 32.

154. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 136.

155. Letter from Mrs. North to the Committees, 6/3/87, SC4233.

156. Hakim Dep., 5/24/87, at 195-96, 198.

157. Secord Dep., 6/10/87, at 34.

158. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 136-37.

159. Hakim Dep., 5/24/87, at 193. Hakim placed Mrs. North's trip to Philadelphia in August or September. *Id.* at 193-95. A lawyer in the Philadelphia suburbs, Harold Cohen, recalled that on September 26, 1986, Zucker interrupted a meeting with him to meet a lady from Washington. But he did not know her name, and the Committees have not been able to determine whether it was Mrs. North. Cohen Dep., 6/1/87, at 11-12.

160. Hakim Dep., 5/24/87, at 201.

161. Lewis Dep., 6/14/87, at 8-14. Lewis added "the reference to the White House and to someone's wife is a certainty. The reference to the name is less certain." *Id.* at 19.

162. *Id.* at 13.

163. Secord Dep., 6/10/87 at 35-36.

164. Ex. AH-27. The $15,000 wired into the STTGI account was commingled with STTGI funds, and thus it is impossible to be sure how it was used. The STTGI files produced for the Committees, however, contain no written record of any transfer from STTGI to the Norths. Summary of STTGI bank records, STG134511. Secord did pay $7,000 in cash for the North security system on May 19 or 20. Robinette Dep., 6/17/87, at 30; Robinette Test., *Hearings*, 100-6, 6/23/87, at 9-10.

165. Hakim Test., *Hearings*, 100-5, 6/3/87, at 218-19.

166. North Test., *Hearings*, 100-7, Part II, 7/10/87, at 10. See also discussion of arms expenditures for the Contras in Section 3.

167. Calero Test., *Hearings*, 100-3, 5/20/87, at 13.

168. Hakim Test., *Hearings*, 100-5, 6/5/87, at 28-29.

169. Secord Letter, SC04081-105. Although it is difficult to verify arms purchases, there is no doubt that payments described as commissions on the arms transactions were actually paid directly and indirectly (through CSF) to members of the Enterprise. Through a series of ledgers, fiduciary agreements, and wire records, CSF documented the distribution of funds to members of the Enterprise.

170. Secord told the Committees that the "profit" on the phase I-IV arms sales was $2.49 million. Secord Letter, SC04081-105.

171. Calero Test., *Hearings*, 100-3, 5/20/87, at 13.

172. North Test., *Hearings*, 100-7, Part II, 7/10/87, at 3.

173. Although Secord did not provide an estimate as to the commissions distributed for the stranded shipment, Hakim did do so. Secord Letter, SC04081-105; Hakim Dep., 5/23/87, at 19. The profit estimated by the Committees for these shipments is $300,000 higher than that estimated by Secord/Hakim.

174. Secord Test., *Hearings*, 100-1, 5/5/87, at 53.

175. See Table 22-4, Markup on Arms Purchased for Contras According to CSF Ledgers.

176. Hakim Dep., 5/22/87, at 88. See Table 22-5, Commissions on Arms Sales to the Contras.

177. Secord Test., *Hearings*, 100-1, 5/7/87, at 171.

178. See Table 22-5, Commissions on Arms Sales to the Contras; Hakim Dep., 5/22/87, at 88-89. Exactly whom Hakim was trying to confuse and what he was trying to accomplish is not clear. On the CSF books, payments to Defex SA (the fake arms account) would appear to depress profits that the Enterprise actually made on the arms sales and thus mislead an uninformed reader.

179. Hakim Test., *Hearings*, 100-5, 6/5/87, at 20-21. Secord claimed that the cost of the weapons was about $2.4 million. Secord letter, SC04184. Committee accountants could only identify $2.2 million in weapons costs for the stranded shipment in the CSF ledgers.

180. Secord Test., *Hearings*, 100-1, 5/7/87, at 191; Hakim Dep., 5/22/87, at 156-62; *Id.* at 161.

181. Hakim Dep., 5/23/87, at 19-20; Hakim, 6/5/87, at 52-56.

182. See Table 22-4, Mark-Up on Arms Purchased For the Contras According to CSF Ledgers. Secord testified that commissions were distributed in a 40/40/20 ratio (Secord, Hakim, Clines) and Hakim indicated that on the later arms shipments the ratio was 30/30/30/10 (Secord, Hakim, Clines, and Scitech); Secord Test., *Hearings*, 100-1, at 53; Hakim Dep., 5/22/87, at 147-48.

The ledgers show that the total sum of money distributed to Korel, Hakim, and C. Tea during February 1985 to mid-December 1985 equaled a 32/33/21/14 ratio among Korel, Hakim, C. Tea and Scitech/STTGI, which is equivalent to a 39/40/21 ratio when one splits the STTGI/Scitech distribution among Korel and Hakim. While most of the relevant ledger entries describing the distributions simply stated "transfer," the last distribution in the period contained a notation "Bal. of Act. for Phases I-II-III."

On December 17, 1985, there was a simultaneous distribution, marked in the ledgers as "Profit Distribution Phase IV," to Korel, Hakim, and Clines, in a 40/40/20 ratio; in addition, there were four other simultaneous 1986 distributions: May 20, June 3, June 20, and August 27, all of which fell in the 30/30/30/10 pattern described by Hakim. A February 7, 1986, distribution was made in basically a 50/50 ratio between Korel and Hakim. Hakim indicated that this was a commission payment.

The balance of the distributions shown in the ledgers from December 17, 1985, to the end of the active days of the Enterprise -- $2.1 million -- did not fall into any pattern, and, except for some very minor amounts, did not include Clines.

Secord told the Committees the total amount of profit the Enterprise made on each arms shipment and roughly the date of each arms transaction. Using this information, the Committees correlated the commission distribution to each arms shipment.

183. The financial data in this Section are based upon the CSF ledgers and supporting bank documents.

184. Summary of distributions to Secord, Hakim, and Clines, excluding commissions, H6372A-77. The Committees traced $328,885 of this money to Hakim and $42,275 to Clines. Secord received $50,000 which he, in turn, loaned to his attorney, Tom Green. *Id.*

185. See Secord Test., *Hearings*, 100-1, 5/8/87, at 307, Secord Ex. 76.

186. See Staff Memorandum, The Tri-American Arms Venture, 10/5/87.

187. Secord Test., *Hearings*, 100-1, 5/8/87, at 193-94, 331; Ex. RVS-75, *Hearings*, 100-1, at 594; Hakim Test., *Hearings*, 100-5, 6/5/87, at 14-16.

188. Marostica Dep., 5/20/87, at 24-26, 29-30; Royer Dep., 5/21/87, at 79-83.

189. Ex. RVS-76, *Hearings*, 100-1, at 598; Hakim Dep., 5/23/87, at 80; Secord Test., *Hearings*, 100-1, 5/8/87, at 331-36.

190. Hakim Dep., 5/31/87, at 178-80.

191. Marostica Dep., 5/20/87, at 13-20; Royer Dep., 5/21/87, at 28-32.

192. Secord Test., *Hearings*, 100-1, 5/7/87, at 193.

193. Royer Dep., 5/21/87, at 45-53.

194. Hakim Test., *Hearings*, 100-5, 6/5/87, at 16; Royer Dep., 5/21/87, at 58.

195. Summary of CSF ledger entries showing transfers to STTGI, H637-1.

196. Summary of STTGI Bank Records, STG134507-09; Secord Test., Hearings, 5/7/87, 100-1, at 168.

197. Scitech ledger entries, H02959-60.

198. Secord Test., *Hearings*, 100-1, 5/7/87, at 166-67.

199. Hakim Dep., 5/23/87, at 143.

200. Hakim Test., *Hearings*, 100-5, 6/3/87, at 217.

201. Scitech ledgers, H02959-60; Summary of CSF Ledgers and Bank Records, prepared by Committee staff accountants, H6372B.

202. Hakim 6/3/87, at 38; Royer Dep., 5/25/87, at 49-50. The payment was wired to the bank which held the property on October 24, 1986. At the same time, an additional $30,000, also drawn from the Scitech fund, was wired to the trust account of a law firm involved in the transaction; wire transfers, H1520-A, B and C.

203. Farber Dep., 6/1/87, at 4 (Zucker bought his 25% interest personally). Clarke and Zink Dep., 7/6/87, at 14 (CSF held Zucker's 25% interest); at 29-31 (Secord's June visit to Forways); at 26-28 (laser sight); at 37-40 ($50,000 wire through Forways).

204. Clarke-Zink Dep., 7/6/87, at 26, 36, 54.

205. Hakim Dep., 5/31/87, at 254.

206. *Id.* at 255.

207. Forways Records, EN 0199-358.

208. Clarke and Zink Dep., 7/6/87, at 9-10, 62; Ex. 2.

209. Ledger entry re $500,000, H02862; ledger entry re $260,000, H1084; Hakim Dep., 5/24/87, at 144-58 ($500,000 earmarked for joint Secord/Hakim investment). Hakim stated that the $260,000 was for a line of credit extended to Forways and that the money should have been returned to the Enterprise. Hakim Dep., 5/23/87, at 171-74.

210. Hakim Dep., 5/31/87, at 255-56; Clarke and Zink Dep., 7/6/87, at 73-76; Ex. 3.

211. Hakim Dep., 5/23/87, at 256, 263-64.

212. Hakim could not identify the purpose of the third fund which totaled $200,000. Since Hakim created it in a

manner nearly identical to the other two, the Committees refer to it here as a Reserve.

213. Secord Test., *Hearings*, 100-1, 5/7/87, at 162; Hakim Dep., 5/23/87, at 108, 257-60.

214. Based upon CSF ledgers.

215. Hakim Dep., 5/31/87, at 34-35.

216. Hakim Dep., 5/24/87, at 163; Hakim Test., *Hearings*, 100-5, 6/4/87, at 286-87; Hakim Test., 6/3/87, at 280.

217. Ex. AH-17, 18, *Hearings*, 100-5.

218. Hakim Test., *Hearings*, 100-5, 6/3/87, at 222.

219. Exs. AH-19 and 20.

220. Secord Test., *Hearings*, 100-1, 5/7/87, at 179.

221. North Notebooks, 8/3/86, Q2316.

222. Nightline, 7/9/87, at 5.

223. North Test., *Hearings*, 100-7, Part I, 7/10/87, at 314-15; Ex. OLN-328, *Hearings*, 100-7.

224. See Chapter 23, "Other Privately Funded Operations of the Enterprise."

225. Secord Test., *Hearings*, 100-1, 5/7/87, at 166.

226. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 124-25.

227. Hakim Dep., 5/31/87, at 40-41.

228. Hakim Dep., 5/31/87, at 9-11; Secord Dep., 6/10/87, at 37-38.

229. The numerical data here are based upon the CSF ledgers and supporting bank documents. See Table 22-7, Individuals and Entities that Control Unspent Enterprise Funds.

230. Secord Test., *Hearings*, 100-1, 5/8/87, at 4.

231. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 45-46.

232. Hakim Dep., 5/24/87, at 35; Hakim Test., *Hearings*, 100-5, 6/3/87, at 200-01.

233. Hakim Dep., 5/23/87, at 259-60.

234. Hakim Dep., 5/31/87, at 34-35, 53.

235. U.S. Congress. Intelligence Authorization Act FY86, Sec 105, P.L. 99-169, 99 Stat. 1003.

236. Raymond F. Burghardt to Rodney B. McDaniel, Memorandum, Secret, "Minutes of the May 16, 1986, National Security Planning Group Meeting," National Security Council (June 4, 1986), N10288.

237. At a White House interagency meeting the week of May 12, the group (comprised of officials of the CIA, Defense, and State), recommended that the Administration consider an immediate reprogramming of $15M from Defense to CIA for non-military assistance to the Contras ($5M per month through August, 1986). Contrary to the conclusion reached by Secretary Shultz on May 16, the group concluded there was "a reasonable likelihood of success" of securing the support of the Senate and House Intelligence Committees for the reprogramming option. Poindexter to the President, Memorandum, prepared by: North and Burghardt, N6263.

238. Shultz Test., *Hearings*, 100-9, 7/23/87, at 17-18; Ex. GPS-A, *Hearings*, 100-9, at 4.

239. At the time, the Secretary and the State Department itself had not been informed of the contributions to the Contras by Country 2 and Country 3. Abrams Test., *Hearings*, 100-5, 6/2/87 at 42. Shultz was advised by McFarlane only on June 16, 1986, of the $32 million contribution from Country 2. He was never told of the $2 million contribution from Country 3. Shultz Test., *Hearings*, 100-9, 7/23/87, at 4.

240. Abrams Test., *Hearings*, 100-5, 6/2/87, at 43.

241. *Id.* at 43.

242. *Id.* at 44; North Test., *Hearing.*, 100-7, Part I, 7/8/87, at 156-57; Shultz Test., *Hearings*, 100-9, 7/23/87, at 19-20.

243. North's secretary, Fawn Hall, testified that she is certain she typed the account number precisely as North gave it to her. Hall Test., *Hearings*, 100-5, 6/8/87, at 487; North Test., *Hearings*, 100-7, Part I, 7/10/87, at 326; Abrams Test., *Hearings*, 100-5, 6/2/87, at 45; Ex. GPS-56-U, *Hearings*, 100-9.

244. Abrams Test., *Hearings*, 100-5, 6/2/87, at 45-46; Ex. EA-10, *Hearings*, 100-5.

245. Shultz Test., *Hearings*, 100-9, 7/23/87, at 20, 51; Abrams Test., *Hearings*, 100-5, 6/2/87, at 45.

246. Shultz Test., *Hearings*, 100-9, 7/23/87, at 20.

247. Ex. GPS-A, at 5.

248. *Id.*; Abrams Test., 6/2/87, at 45.

249. *Id.*

250. Abrams Test., *Hearings*, 100-5, at 46-7.

251. Abrams Test., *Hearings*, 100-5, 6/2/87, at 48-50; Ex. GPS-A, *Hearings*, 100-5, at 5.

252. Ex. GPS-56-0. Subsequently, Brunei informed State that the $10 million had been transferred on August 19, 1986. Ex. GPS-56-T, *Hearings*, 100-9.

253. Ex. GPS-A, at 5.

254. Ex. GPS-A, at 5; GPS-56-R.

255. Sofaer Dep., 6/18/87, at 75-76.

256. Ex. GPS-A, *Hearings*, 100-9, at 6.

257. Sofaer Dep., 6/18/87, at 83. According to Secretary Shultz's chronology, on the day Sofaer was informed of the Brunei solicitation, Monday, December 1, the U.S. Ambassador to Brunei was instructed to advise Brunei that if funds were still under its control, they should be frozen. Ex. GPS-A, *Hearings*, 100-9, at 6. Sofaer testified he received the number of the Lake Resources account in Switzerland from Nick Platt on Tuesday and "immediately communicated that to the Department of Justice and to the FBI." Sofaer Dep., 6/18/87, at 82. On Wednesday, he said, "I started pressing for action and was not getting it." *Id.* at 82.

258. Statement of Chairman Inouye, McFarlane Test., *Hearings*, 100-2, 5/12/87, at 83-84.

Chapter 23

Other Privately Funded Covert Operations

Under the plan that Lt. Col. Oliver L. North attributed to Director of Central Intelligence William Casey, profits from the Iran arms sales were to fund not just the Contras, but other covert operations of the Enterprise as well. Before the Iran arms sales became public, Lt. Col. Oliver L. North had begun implementing certain projects he and Casey believed the Enterprise could perform.

"We always assumed," North said later "that there would come a time again, as indeed it did, where the Congress would make available the moneys necessary to support the Nicaraguan freedom fighters."[1] When that happened, the Enterprise, functioning free of government scrutiny and with ample funds, could carry out other covert projects; many were intended "to be conducted jointly [with] . . . other friendly intelligence services" while others would be limited to activities conducted by North, Secord and Hakim.[2]

Even before the Enterprise was formed, however, North was operating with non-appropriated funds on another project that the Government could not do because it was contrary to United States policy—the ransom of the hostages.

The DEA Ransom Operation

Before the Iran initiative was conceived, the NSC staff was working on a plan to ransom the hostages. Confronted with the policy of the U.S. Government of not paying for the hostages release, North found a loophole by using private funds.

Edward V. Hickey, Jr., an Assistant to the President, attended a meeting of the Terrorist Incident Working Group (TIWG) in January 1985. Hickey noted that the area in Lebanon, where the hostages were held, was a known area of narcotics trafficking. Hickey had a personal interest in the hostages. He had known William Buckley, the CIA Chief of Station in Beirut who had been kidnapped on March 16, 1984.

Hickey asked his long-time friend, a DEA Special Agent (Agent 1), if DEA could help to locate Buckley and the other hostages. Agent 1 reported that another DEA Special Agent (Agent 2) had contacts in the Middle East who might be able to help. Shortly thereafter, Agents 1 and 2 met with Hickey and Hickey's military aid General Matthew Caulfield. Agent 2 told Hickey that he had an excellent source with impressive contacts in Lebanon.[3]

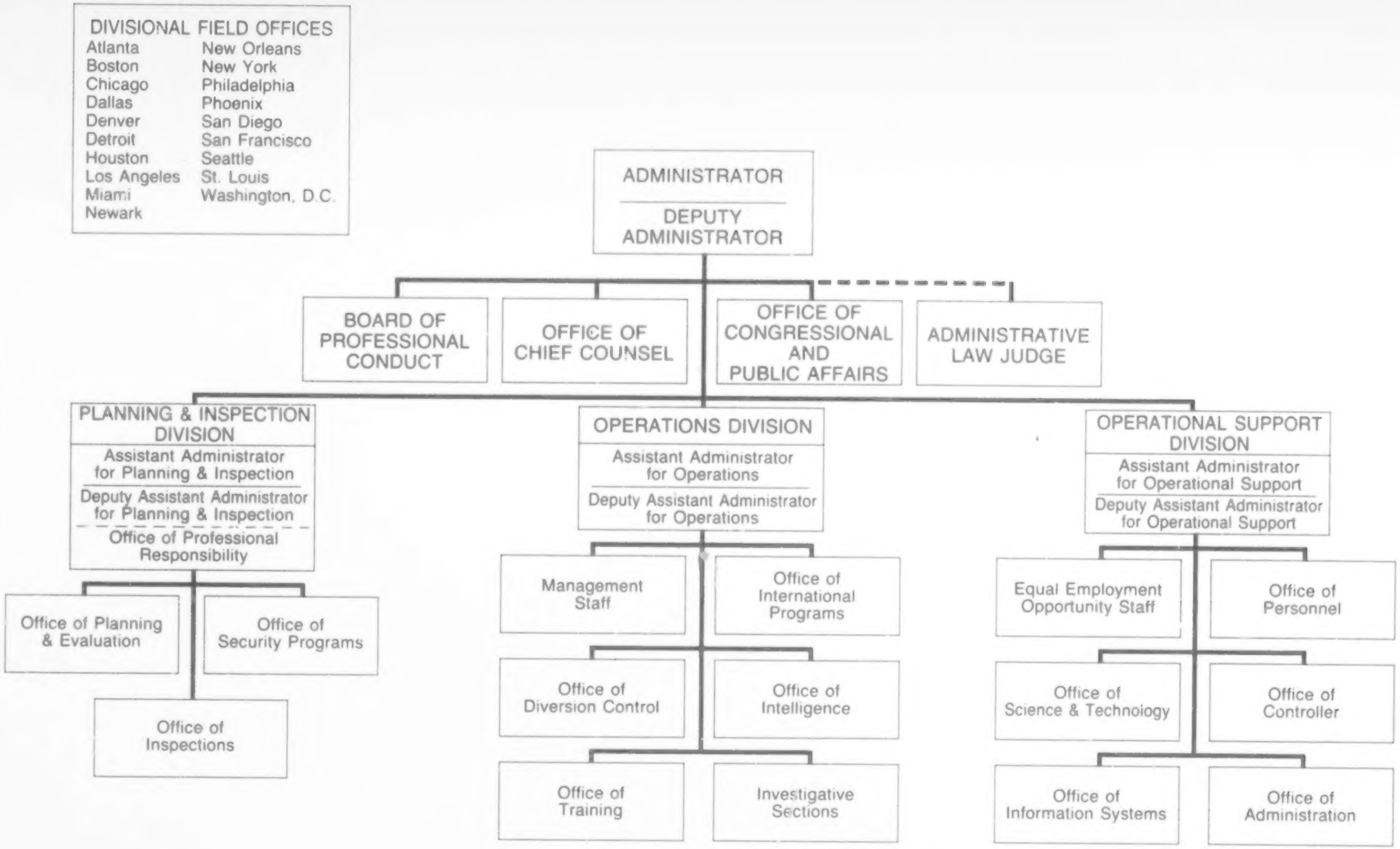
Following this meeting, Hickey met with Deputy National Security Adviser John Poindexter and encouraged him to include the DEA in the Hostage Locating Task Force (HLTF).[4] On February 13, 1985, National Security Adviser McFarlane notified the Departments of State, Defense, and Justice and the CIA that the Task Force would report to the TIWG and it would include the DEA.[5] The DEA was to be represented on the Task Force by Abraham Azzam, an Arabic speaking agent of Lebanese heritage.[6] Funding for the Task Force would come from the CIA.[7]

With the approval of DEA Administrator Mullen, the DEA provided Agents 1 and 2 with $20,000 for travel, expenses and for payments to their sources for information on the hostages.[8] If the DEA's sources were productive, they were to be turned over to the CIA for further operational handling. Agents 1 and 2 were instructed to report to Azzam, who in turn was to report to DEA Deputy John Lawn.[9]

Agents 1 and 2 were not to be involved operationally in securing the release of the hostages; their function was to assist in obtaining intelligence information regarding the location of the hostages.[10] According to Lawn, he gave these instructions because Federal law provides that DEA's responsibility is for operations that concern drug-related law enforcement.[11] (See Figure 23-1.)

In February 1985, Azzam, Agent 1, and Agent 2 met with Agent 2's source in Geneva and in New York. The source claimed that he had contacts who could arrange to pay off individuals in Lebanon who had enough influence over the captors to arrange for the release or escape of the hostages. He added that $50,000 was needed to begin operations,[12] and that the hostages could be released if the United States sold weapons, tanks, airplanes, and other military equipment to those controlling the holders of the hostages. Oliver North, the NSC staff member responsible for terrorism issues, later told the agents the United States could not sell weapons.[13]

Figure 23-1. Organization Chart of the Drug Enforcement Administration.


DIVISIONAL FIELD OFFICES
Atlanta
Boston
Chicago
Dallas
Denver
Detroit
Houston
Los Angeles
Miami
Newark
New Orleans
New York
Philadelphia
Phoenix
San Diego
San Francisco
Seattle
St. Louis
Washington, D.C.
ADMINISTRATOR
DEPUTY ADMINISTRATOR
BOARD OF PROFESSIONAL CONDUCT
OFFICE OF CHIEF COUNSEL
OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS
ADMINISTRATIVE LAW JUDGE
PLANNING & INSPECTION DIVISION
Assistant Administrator for Planning & Inspection
Deputy Assistant Administrator for Planning & Inspection
Office of Professional Responsibility
Office of Planning & Evaluation
Office of Security Programs
Office of Inspections
OPERATIONS DIVISION
Assistant Administrator for Operations
Deputy Assistant Administrator for Operations
Management Staff
Office of International Programs
Office of Diversion Control
Office of Intelligence
Office of Training
Investigative Sections
OPERATIONAL SUPPORT DIVISION
Assistant Administrator for Operational Support
Deputy Assistant Administrator for Operational Support
Equal Employment Opportunity Staff
Office of Personnel
Office of Science & Technology
Office of Controller
Office of Information Systems
Office of Administration

October 1987
Source: U.S. Department of Justice.

Under the Task Force authorization, the CIA was to pay for hostage information. But the CIA was reluctant to do so without proof that Agent 2's source was legitimate and would produce valuable information. Agent 1, Agent 2, Hickey, and Caulfield then met with Poindexter to explain their need for funds. Poindexter told them he would look into the matter.[14]

In early March 1985, Hickey arranged a meeting among North, Agent 1, Agent 2, Azzam, and Caulfield. At the meeting, the agents explained their efforts to North and informed him that the CIA was reluctant to provide the money.[15] In a follow-up phone call to North on March 12, 1985, Caulfield said the DEA's efforts were "not very sophisticated."[16] He explained that the plan now called for four hostages to be released in exchange for $1 million per hostage, once the $50,000 was paid to the source.[17] North's notes of the conversation reflected his own reaction: "fundamental decision: Do we pay ransom?"[18] North answered his own question with his actions: he became the operational leader of the project.[19]

Soon thereafter, the DEA agents arranged for two CIA officers to meet Agent 2's source in New York. The two officers were sufficiently convinced of the value of the source to authorize the $50,000 expenditure from the CIA.[20] Agent 1 received the money on March 18 from a CIA officer and signed a form acknowledging that he was responsible to account for it.[21] Agent 1 paid the money to the source in two installments: $20,000 on March 19, and $30,000 on April 20, after the source had returned from a trip to Lebanon.[22]

On May 2, 1985, upon the source's return from another trip to Lebanon, he told the agents that he now needed to give $200,000 to his contact, who would locate Buckley and obtain proof that he was still alive. After that payment, the source said, it would take an additional $1 million per hostage to secure their release.

Azzam became concerned when he learned that the source's contact was known to the DEA as a narcotics trafficker and a thief.[23]

Azzam voiced his concerns to CIA officials who agreed that the $200,000 should not be paid until the source produced proof that his contacts had access to Buckley. The proof was to consist of photographs of the hostage with current newspapers, or similar items, showing the date of the proof.[24]

North told Azzam he could get the ransom money of $1 million per hostage. When Azzam asked North where he would get it, North asked him not to inquire.[25] Azzam surmised correctly that North was planning to get the money from H. Ross Perot, a Texas industrialist.[26] Azzam told this to the CIA officers. The next day, North called Azzam to express his anger that Azzam had told the CIA. Azzam could not understand North's anger. He believed that the CIA was to be a full partner given that DEA could not legally have any operational capabilities.[27] Reportedly, Perot was upset that his role had been compromised and complained to Poindexter and McFarlane.

In early May 1985, the source went to Lebanon to obtain the required proof while Agents 1 and 2 waited in Cyprus. The source produced a document that allegedly was proof of access to Buckley.[28] Azzam directed Agent 1 to bring the document to him for verification by expert analysts from the CIA and FBI laboratories. Despite these instructions, Agent 1 presented the "proof" first to North, a signal in Azzam's eyes that Agents 1 and 2 regarded North as their principal supervisor.[29]

On May 14, 1985, Azzam and Agent 1 took the document to the CIA. The Agency found the evidence unacceptable.[30] The CIA and FBI technical reports which were produced two weeks later were inconclusive.[31]

Because the first evidence the source produced was at best inconclusive and at worst fabricated, the CIA developed a series of questions to the hostages only they could answer.[32] When the source refused to return to Lebanon and submit the questions, the CIA and Azzam declined to authorize the $200,000.[33] According to the CIA's Deputy Director for Operations, Clair George, the plan was a "scam, a fake" nothing more than "hocus pocus." [34]

North Continues the Initiative

Notwithstanding this account of their source, Agents 1 and 2 urged North to continue working with them.[35] On May 22, 1985, according to North's notes, the two Agents assured North that their source could produce the hostages if given $200,000 for payments to officials in Lebanon and $2 million for two hostages.[36] The agents explained that they needed to change their operating procedures: they wanted to report directly to the NSC staff to get the DEA "off their backs." [37] They advised North to contact DEA Administrator Lawn or Attorney General Meese directly to ensure that they could proceed without interference.[38]

On June 7, 1985, in a memo to McFarlane, North detailed the DEA operation. He wrote that, "at the request of the two DEA officers who originated the contact in Lebanon, I met with their asset [source] in Washington . . ." [39] North informed McFarlane that the $2,200,000 would be provided by a "donor," but that "travel arrangements and operational costs are currently being financed from funds normally available to the Nicaraguan resistance." He added that "our normal point-of-contact of these matters is not yet aware." [40] North's disclosure that private money raised for the benefit of the Contras was available to support the DEA operation is consistent with a statement he made at the time to Clair George, who recalled:

> Ollie North always sort of implied when we were talking about the hostages that if I ever thought that I needed money and that policy dictated it, but I didn't want to take it from CIA funds because they are Congressionally controlled, he could get money.[41]

Finally, North recommended in the memorandum that McFarlane approve the plan and ask the Attorney General to detail Agents 1 and 2 to the NSC for 30 days. McFarlane initialed the "approve" line at the bottom of the memo. McFarlane handwrote just under the approve line, "North to follow up 6/10 with AG."[42]

McFarlane testified that he did not realize the full meaning of North's memorandum regarding his use of funds "normally available" to the Contras. "To tell you the truth," McFarlane testified, "it is my own oversight. . . . If I had been careful about reading [North's memorandum] I would have [understood its true significance]."[43] McFarlane testified that he never asked North whether he was getting money from Calero to assist in the release of the hostages. "I didn't, but I should have, and I just missed this. That's all," he explained. "I thought it was all coming from a private U.S. citizen."[44] Poindexter, however, knew the source of the funds. He stated that North told him the money was coming from Calero controlled funds that had been contributed to the Contras.[45]

Around June 10, North prepared a memorandum for Attorney General Meese describing how the DEA agents would deposit the $200,000 and open an account for the remaining $2 million, which was to be provided by the "donor to bribe those in control of the hostages." North asked the Attorney General to assign the DEA agents to "this organization [NSC staff] for a period not to exceed 30 days."[46] Attorney General Meese complied with North's request.[47] That assignment would last for over one year.

Once the DEA agents were assigned to North, they reported directly to him, except for occasional, cursory briefings to Lawn.[48] They wrote no reports of their activities and made no entries in the DEA informant files regarding contacts with their sources. Further, they immediately destroyed their notes after orally reporting to North.[49]

The agents embarked on the operation as planned. In late May, Jay Coburn, an employee of H. Ross Perot, had delivered $200,000 in cash to North and Agent 1 without obtaining a receipt.[50] North placed the money in his office safe and told Agent 1 that a nongovernmental employee would have to handle the money.[51] Agent 1 suggested his brother, who had experience in security matters.[52] The plan called for Agent 1 and his brother to meet with their source on Cyprus and for the brother to give him the money. If everything went well, they would arrange for the $2 million to be deposited and available for "contacts," who would arrange the release and transportation of two hostages.

True to the plan, North gave the brother the $200,000 in cash and $11,000 in Calero traveler's checks for expenses.[53] Agent 1 and his brother travelled to Cyprus in late June of 1985, where the brother gave the source the $200,000 to take to Lebanon.

Two unrelated events then intervened: the hijacking on June 14, 1985, of TWA flight 847 by Lebanese terrorists, and in early June the death of one of the source's contacts in Lebanon.[54] As a result, the DEA source claimed to be leery about approaching anyone associated with the hostage holders. The source, after a trip to Lebanon, reported that the hostages possibly could be freed in exchange for arms.[55] The agents concluded that this was not feasible.[56] Ironically, this same course was about to be pursued by the United States in the Iran initiative.

Late 1985 and Early 1986: North Presses On

In December 1985, Charles Allen of the CIA became Chairman of the Hostage Location Task Force.[57] Allen already was involved in the Iranian initiative. North also recruited an Army Major of the Defense Intelligence Agency, who had an intelligence background in the Middle East. North or Allen then picked the Major to serve as "team leader or chief of staff, organizer, et cetera."[58]

The first meeting of the Task Force took place on December 23, 1985, and included were Allen, North, the Major, and others representing various federal agencies and departments.[59] Agents 1 and 2 were not made an official part of the Task Force, but North advised the Task Force that Agents 1 and 2 would be useful sources for "intelligence and special projects."[60]

The Major described Agents 1 and 2 as "street toughs in camel hair coats,"[61] who were "street-smart but not very knowledgeable of other federal agencies . . . outside their own, nor knowledgeable certainly in any way, shape or form, about Middle East or international relations or politics or the military."[62] At their first meeting, the DEA agents told the Major and Allen that they did not want to deal with the Operations Directorate at the CIA; Allen told them that the Major would be their CIA contact.[63]

On January 14, 1986, Agent 1 and the Major went to New York to meet with and evaluate a new DEA "source," who, if acceptable, would be paid from CIA funds.[64] On January 28, 1986, the Major reported to North his reservations about the source and the whole operation. North said that he liked the DEA agents because they were "action oriented." From that point on, the Major sensed that North was deliberately keeping him uninformed.[65] Allen testified that he believed the DEA agents were working only to obtain intelligence information and were not involved operationally in hostage-release activities.[66]

In January 1986, the Major expressed to Allen his concern regarding the propriety of using money to gain the hostages' release. Allen replied that North had told him that the President had said he would "go to Leavenworth if necessary" to free the hostages.[67] The Major also recalled that in March 1986, while Allen and the Major were generally discussing how to finance efforts to free the hostages, Allen commented that, "Ollie was already into his Contra money for the hostages. . . ." [68] The Major did not pursue this remark.[69]

In late April 1986, the Major submitted a paper to North analyzing a range of options to gain the release of the hostages.[70] When the Major met with North to present his paper, he urged North to abandon any effort to gain the release of the hostages by providing arms to Iran.[71] Indeed, his paper warned that a faction in Iran might leak such a sale "simply to embarrass the present Administration." [72] North was noncommittal and "made no comment on [the Major's] noting that it was against official U.S. policy . . . [and] encouraged terrorism." [73] In late May 1986, the Major left the Task Force.[74]

The DEA Agents Become Operational Again

In May 1986, at the very time that North was preparing to accompany McFarlane to Tehran, he continued to work with the DEA agents to ransom the hostages for $1 million each. When the plan finally was executed, it occurred simultaneously with the McFarlane mission to Tehran.[75]

In May, Agent 1 was in Cyprus working on a hostage rescue plan with the new DEA source. He called Agent 2 in the United States and requested more money: $20,000 for the source and $10,000 for Agent 1's expenses.[76] Agent 2 asked North, who then turned to the Enterprise. North gave Agent 2 the telephone number of Albert Hakim, Secord's associate, in Geneva.

A DEA Agent ("Agent 3") called upon Hakim in Switzerland. He gave Agent 3 $30,000 cash in bills wrapped in Credit Suisse bands, without a receipt.[77] Agent 3 gave the money to Agent 1, who took it to Cyprus.[78] The DEA agents were to rent speed boats as a diversion and North was to obtain assistance from the U.S. Sixth Fleet.[79]

According to the new plan, certain Lebanese elements would be paid $1 million to rescue each hostage. Once the hostages were freed, it was decided they would be taken by the Enterprise ship *Erria* to Cyprus. While the Enterprise provided the expense money, North turned once again to H. Ross Perot for funding of the ransom. In June 1986, Jay Coburn, Perot's aide, flew to Cyprus in a private plane. Coburn was to provide $2 million upon the release of the hostages.[80] After Coburn arrived, Clines appeared in Cyprus with the *Erria*, but the plan collapsed: the contacts demanded the money before releasing the hostages, but the DEA agents refused to pay until the hostages were freed.[81]

Soon after the June 1986, DEA mission failed, North told McFarlane that Perot had complained that he lost his money on the operation, and that North had failed to keep him informed. North asked McFarlane to mollify Perot. McFarlane eventually saw Perot and asked him "not to be too hard on Ollie." [82] In addition, a letter was addressed to Perot from the President, dated June 11, 1986, stating:

> I have been briefed on your effort over the past several weeks on behalf of our Americans abducted in Beirut. On behalf of the American people, I want to thank you for your discreet assistance in this regard. My hope is that we may yet succeed in reuniting these men with their families and loved ones. Thanks again and God bless you.[82a]

In August and September 1986, Agent 1 called North about two possible sources on the hostages. North told Agent 1 he could not "touch them" and referred him to Dewey Clarridge at the CIA. On October 14, 1986, North met with Lawn. North expressed his appreciation for the DEA agents' efforts, but acknowledged that their efforts had failed.[83] With that, U.S. efforts to ransom the hostages ended.[84]

The Attorney General's Role

Throughout the DEA operation, private funds were used to pay the expenses of the agents and to provide the ransom money. Yet, as discussed in Chapter 27, the use of nonappropriated funds to finance Government operations is inconsistent with the provisions of the Constitution requiring that all monies spent by the Government be appropriated by Congress. Numerous statutes and governmental accounting rules implement this principle. A government official receiving money for the government from any source must deposit it in the Treasury;[85] government agencies may not accept gifts of money absent specific statutory authorization;[86] and government employees may not receive private funds for the performance of their governmental duties.[87] To violate these laws creates an obvious conflict of interest for the agents as well as privatizing governmental functions. The use of private money to finance the DEA operation broke each of these rules.

The evidence points toward the conclusion that the Attorney General approved the use of private funds for the ransom/resource operations. According to McFarlane, North was informed by the Attorney General that it was acceptable for Perot to contribute money to be used to bribe public officials and other individuals in Lebanon. McFarlane stated that Attorney General Meese explicitly had approved this action and told him he was "keeping an eye on it." [88] North's testimony confirms McFarlane's account. North stated that he understood from the Attorney General that "we couldn't use U.S. Government monies for those purposes [but] we could use outside monies." North also recalled informing the Attorney General of the source of the money.[89] Attorney General Meese, however, maintained that he was not aware of a "plan to use private funds to ransom people in foreign countries," [90] nor did he recall addressing the issue of using appropriated or unappropriated funds to conduct the activity.[91]

McFarlane testified that Attorney General Meese had advised that while Government funds could not be used, private monies could be used to bribe foreign officials to free the hostages.[92] Agent 2 testified that Lawn told him that the Attorney General had personally approved Agent 2's participation in the NSC hostage effort.[93] Agent 2 told the Committees that Lawn had given him instructions that the DEA agents not handle the private money personally.[94] Agent 1 stated that North gave him the money-handling instructions and attributed them to the Attorney General.[96]

The Attorney General denied knowing of the specifics of Perot's involvement in the plan,[97] although his telephone logs reflect some contact with Perot during 1985. Then, on November 26, 1986, after the diversion became public, the Attorney General telephoned Perot. A note taken by Meese's aide on December 3, 1986, reflects an instruction by the Attorney General to call Perot to check on whether he would respond that the Attorney General knew of or authorized the payments.[98]

Administrator Lawn's testimony regarding his knowledge of using private money to ransom the hostages also contradicted documentary evidence. Lawn at first testified that he was never told that the money would be paid by a private donor.[99] Lawn was then shown a copy of his handwritten notes of a briefing of the plan by Agent 2 which reads, in part: "donor money, not CIA;" "facilitators will not handle funds;" and "contact with donor." [100] Lawn then admitted that "obviously I was told that there was donor money and I was obviously told that it was not CIA money. I don't recall hearing that. I don't recall recording that. But this obviously is my handwriting." [101] As to the notations that the agents would not themselves handle the private funds but only facilitate the delivery of the funds, Lawn admitted: "I assume that I was told. I am sorry, I just don't recollect having been told." [102]

Policy Considerations Were Ignored

President Reagan repeatedly has stated since 1981 that the United States would not pay ransom to terrorists who kidnapped Americans,[103] a policy adhered to by Administrations of both parties over the years. There are practical reasons for such a policy. Clair George, the Deputy Director for Operations, stated: "You don't trade for hostages . . . because now everybody is going to sell them for something." [104] Former Deputy Director of the CIA, John McMahon stated that ransom payments could become a source of funds for terrorists. When they "run out of funds, they would kidnap the nearest U.S. businessman, get a ransom and then they'd fill their coffers for a year. When they needed more, they would ransom another one." [105]

The DEA operation had all these shortcomings plus an additional one: it was inconsistent with the simultaneous effort to gain the release of the hostages through the Iran initiative. It is reasonable to believe that the Lebanese hostage holders would be less likely to release the hostages at the request of Iran, at the same time as they were being offered $1 million per hostage in the DEA initiative.

There was little consideration of these factors. The DEA initiative was not discussed at a meeting of the NSC; there were no policy papers; and no consultation with the Secretaries of Defense and State.[106] Secord summed up the process when he testified that "it did not occur to me at the time that these two [efforts] clashed," but he acknowledged that "they could have collided." [107] Some on the NSC staff characterized the payments to the hostages holders as "bribes" not ransom, and the operation as a rescue, not a payoff.

The Other Operations

Israel

During the 1985–1986 winter, North set into motion a series of projects involving Israel. These took advantage of the close working relationship North had developed with his counterpart in the Israeli Government, Amiram Nir, Adviser to Prime Minister Peres on combatting terrorism.

North and Nir had similar backgrounds in working for their respective governments: both believed in unorthodox tactics when dealing with terrorism. According to North, Nir broached the idea for joint operations during a trip to the United States in January 1986. Nir carried a proposal, according to North, that the profits Israel would generate from the Iranian arms sales would be used, in part, for a series of covert operations.[108] These would include gathering intelligence on terrorist groups, seeking the release of hostages, initiating and financing propaganda efforts that would be operated covertly.[109] North recorded in his notebooks that Nir had suggested on January 9 that, from the sale of the first 1,000 TOWs to Iran for $10 million, $2.5 million would be dedicated for

"Ops." [110] Each project received a code name in the sequence TH-1, TH-2, and so on. North told the Committees that the projects had not progressed beyond the planning stage and, therefore, he did not seek a Presidential Finding authorizing any of these operations.[111]

North testified that he discussed the Enterprise's role in these projects with Poindexter, but Poindexter said he did not recall such a conversation.[112] The only evidence that the President knew of these sensitive projects appears in a September 15, 1986, memorandum from North to Poindexter. North asked Poindexter to brief the President on certain initiatives, including one of the proposed joint U.S.-Israeli covert operations. An attachment to the memorandum which North suggested should be briefed to Casey stated that "covert funds could be made available" for this operation, but the source of the funds was not disclosed.[113] Poindexter noted on the memorandum that he approved North's recommendation to brief the President on these operations and that it was "done." Poindexter testified that he did not know or tell the President that the covert funds referred to by North were coming from the Enterprise.[114]

The Lebanese Operation

Another initiative undertaken by North involved the use of DEA and Israeli contacts to fund and equip a force in Lebanon. North described the proposed force as part of a "long term operation" to give the United States some future military leverage on the ground in Lebanon.[115]

North sent Poindexter a PROF note in June 1986 about Secord's progress in working with a Lebanese group on a hostage rescue operation: "After the CIA took so long to organize and then botched the Kilburn effort, Copp [Secord] undertook to see what could be done through one of the earlier DEA developed [Lebanese] contacts. Dick [Secord] has been working with Nir on this, and now has three people in Beirut and a 40-man . . . force working for us. Dick rates the possibility of success on this operation as 30% but that's better than nothing." [116] In closed testimony before the Committees, North indicated that the project was never carried out even though "we spent a fairly significant amount of money on . . . [this additional] DEA operation." [117]

Peter Kilburn, a 60-year-old librarian at the American University in Beirut, was kidnapped on November 30, 1984. U.S. sources believed that, unlike the other hostages, Kilburn was being held by a criminal faction in Lebanon. At one point in the fall of 1985, North had contemplated allocating Enterprise funds to support an operation intended to free him.[118] The plan was terminated when Kilburn was murdered allegedly by agents of Mu'ammar Qaddafi shortly after the American air raid on Libya in April 1986.

Other Countries

Other projects contemplated by North involved aiding anticommunist resistance groups around the world. North told the Committees that he and Director Casey "had several discussions about making what he called off-the-shelf, self-generating activities that would be able to do a number of these things. He had mentioned specifically an ongoing operation." In addition, North testified, "I concluded within my own mind the fact that it might require [other ongoing] operations [as well]." [119] In testimony before the Committees, North explained his motivation for assisting resistance groups. "We cannot be seen . . . in the world today as walking away and leaving failure in our wake. We must be able to demonstrate, not only in Nicaragua, but . . . elsewhere where freedom fighters have been told, we will support you, we must be able to continue to do so." [120]

In April 1986, North asked Secord and his partner Albert Hakim to use $100,000 from the Lake Resources Swiss accounts to purchase conventional radio phone equipment for donation to a political party in a foreign country. On April 29, two representatives of a U.S. manufacturer met in Miami with Secord and one of Secord's associates, and the purchasing agent for the political party. At the meeting, the purchasing agent agreed to buy $100,000 of the radio equipment, and Secord—upon North's request—arranged for the Enterprise to wire this amount to the manufacturer.

The Erria

Another of North's projects involved the purchase by the Enterprise of the M/V *Erria*, a small coastal freighter of Danish registry used to transport goods between Europe and the Middle East. The *Erria*, built in 1973, was small, only 163 feet long, and weighed 710 tons.[121] Before its purchase, the *Erria* was owned by its captain, Arne Herup.[122]

In 1984 and 1985, the *Erria* was used to run weapons to the Persian Gulf and then to Nigeria and Central America. Because of its Danish registry, the *Erria*, was able to escape the scrutiny of customs officials.[122a] "When we ended up needing a ship to perform a certain task," recalled North, "there was nowhere to get one on short notice, and so this organization [the Enterprise] produced it practically overnight." Poindexter testified that Secord offered the ship because the Department of Defense could not provide a ship suitable for the covert operation.[123] According to North, Casey said "we can't find one anywhere else, get a ship. It didn't cost the taxpayers of the United States a cent." [124] The money came from the Iran arms sales and other Enterprise funds.

The *Erria* first came to the attention of the Enterprise in April 1985, when it carried arms purchased through Secord to the Contras. En route to Central

America, the *Erria* came under surveillance by an unidentified "fishing boat" which Captain Herup assumed was Cuban.[125] Herup took evasive action and brought the cargo successfully to a Central American country.[126] Herup's actions impressed Secord's associate, Thomas Clines, and when North needed a ship in April 1986, for covert operations, Clines suggested to Hakim that the Enterprise purchase the *Erria* from Herup, and keep him as Captain.

Hakim bought the ship for $312,000 through Dolmy Business, Inc., one of the Panamanian companies owned by the Enterprise, on April 28, 1986.[127] Herup was asked to remain as captain for at least six months, with Danish agent Tom Parlow of SA Chartering continuing as the ship's agent. Hakim and Clines told Herup that they were working for the CIA and that at some future date they might ask him to transport technical equipment for covert operations. They promised that when the project was finished, the ship would be returned to Herup at no cost.

The Proposed Charter to the CIA for a Covert Operation

The first mission North contemplated for the *Erria* was for an extended covert operation. On April 28, 1986, Secord sent a KL-43 message to North proposing that the CIA charter the vessel for that purpose: ". . . Abe [Hakim] still in Copenhagen with our lawyer finalizing purchase of ship. Deal has been made after three days of negotiation. The Danish captain is up and eager for the mission—he now works for us. We are asking . . . [of the CIA] for firm fixed price contract of $1.2 million for six months. He will probably balk at this price . . ."[127a]

As Secord predicted, the Agency felt the rate was excessive (several times the prevailing rate for similar assets) and it balked at chartering the ship. In addition, the CIA informed North that it was not interested on technical grounds and that it did not feel that security could be maintained because of the ship's previous use by North's associates to ferry arms to Central America. The Agency indicated that Tom Clines' involvement was a negative factor of major proportions.[128]

North persisted in his efforts to have the CIA lease the ship. He then enlisted Poindexter's help. In a May 14 memorandum, Vincent M. Cannistraro of the SC staff urged Poindexter to take the matter up with Casey:

> Status of Ollie's Ship. Ollie has offered the use of a Danish vessel for [a covert operation]. He first offered CIA a six month lease. CIA told me that they thought it was too expensive, and the cost and time involved in refitting the vessel for [the] mission made the alternative option . . . more attractive. Ollie then offered to [perform the mission] using his own resources. [C/NE] has told me that because of the alleged involvement of one Tom Clines (who was involved with Wilson and Terpil), CIA will have nothing to do with the ship.[129]

In the end, Casey supported Clair George's decision that the ship was not suitable for Agency use.

The Odyssey of the Erria

On May 9, 1986, the *Erria* commenced its operations under its new owners, the Enterprise. The ship was to travel to pick up technical equipment for a covert operation.

On May 16 Herup was ordered to abort the mission and return to Larnaca, Cyprus. The new plan for the ship was to pick up any American hostages released as a result of the DEA initiative. En route to Larnaca, Herup received instructions to take up a position off the coast of Lebanon and to await further directions.[130]

As described earlier in this Chapter, the DEA hostage ransom plan failed. Accordingly, after a 48-hour wait, Hakim ordered the ship to sail on to Larnaca. On June 5, Herup received instructions to head for Gibraltar, but at the last moment the ship was diverted to Cagliari, Sardinia. From there, he was told to take the ship to Setubal, Portugal, to await an arms cargo from Defex. The cargo at Setubal was not ready for loading, and Herup was instructed to return to Copenhagen, where he arrived on July 4.[131]

The *Erria* then was ordered to Szczecin, Poland, where it arrived on July 10. The cargo it picked up was marked "machine parts," but actually consisted of 158 tons of Communist-bloc weapons, including AK-47 assault rifles, hand grenades, mortars, and a variety of ammunition.[132] The shipment was consigned to Energy Resources International, an Enterprise company.

The *Erria*'s next stop was Setubal, Portugal, where on July 19, it loaded an additional 222 tons of arms from Defex Portugal in the presence of Parlow and Clines.[133] Herup was told to set his course for a Central American port. According to Hakim, the total cargo, which he called the "stranded shipment," cost $1.7 million;[134] Secord placed the cost at about $2.4 million.[135] En route to Central America, Parlow called Herup and told him to stop the ship: Congress was in the process of repealing the Boland Amendment. The vessel sat in the water for 4 days. Captain Herup then was ordered to return to Portugal, where he was met by Clines.[136]

The Enterprise decided to find a buyer for the 380-ton cargo of arms now on board the *Erria*. Defex sold the arms to an intermediary for $1.2 million. The intermediary, in turn, sold the cargo for $2,156,000 (including transportation),[137] to the CIA, which did not want to deal with the Enterprise because of Clines' involvement. The arms were transferred from the *Erria* to another ship on September 20 for delivery to the CIA.[138]

Hakim and Secord continued their efforts. Herup was ordered to take the now-empty *Erria* to Haifa, Israel, where it was to receive a new shipment of arms. So as not to run afoul of the Arab boycott, the name of the ship was altered to read, "*Ria*," and false entries were placed in the Captain's log. On October 13, at Haifa, Herup loaded a crate containing eight tons of Eastern Bloc arms that Nir had promised for the Contras. The captain also had been told he was to pick up pharmaceuticals for Iran. No pharmaceuticals were loaded.

Herup was then ordered to go to Fujairah in the Gulf of Oman. The Iranians had promised North two Soviet T-72 tanks, but after the *Erria* waited 6 weeks in the Gulf, the plan failed to materialize. On December 9, Herup was ordered to open the Israeli crate. He found only 600 well-used AK-47 assault rifles and 15 cases of ammunition—valued at approximately $100,000—a cargo not worth transporting to Central America.[139]

After the revelations of the Iran-Contra covert operations in November 1986, Clines or Hakim ordered the *Erria* on December 14 to return to Eilat, Israel, where the crate of weapons that had been received in Haifa were unloaded.

The *Erria* returned to Denmark later in December. Its missions on behalf of the Enterprise were at an end.

Conclusion

The *Erria* was in a sense a metaphor for the other operations of the Enterprise—ventures that began with ambitious expectations but accomplished nothing. But the fate of these ventures cannot obscure the danger of privatization of covert operations or the fact that the participants in the Enterprise had audacious plans for covert operations. Had the architects of the other operations been emboldened by success, and not frustrated by failure, the Committees can only conjecture, with apprehension, what other uncontrolled covert activities on behalf of the United States lay in store.

Chapter 23

1. North Test., *Hearings*, 100-7, Vol. 1, at 140.

2. North Test., *Hearings*, 100-7, Vol. 1, at 314-15; Ex. OLN 328.

3. Hickey Int., 6/8/87.

4. *Id.*

5. McFarlane to Shultz, Weinberger, Smith, Casey, Vessey, Subj. "Hostage Locating Task Force," 2/13/85. See also: Poindexter to Shultz, Weinberger, Meese, Casey, Crowe, Subj. "Revised Terms of Reference (TOR) for Hostage Locating Task Force (HLTF)," 12/20/85.

6. Lawn Dep., 8/20/87, at 8-9, 11.

7. *Id.* at 41-42.

8. Special Enforcement Operation Account (SEO 471); Azzam Int., 5/26/87.

9. Lawn Dep., 8/20/87, at 7-8.

10. *Id.* at 49.

11. Lawn Dep., 9/20/87, at 49.

12. Azzam Int., 5/26/87.

13. Agent 1 Dep., 8/28/87, at 56-57.

14. Hickey Int., 6/9/87.

15. Azzam Int., 5/26/87.

16. North Notebooks, 3/12/85, Q1168.

17. *Id.*

18. *Id.* Q1168-69 .

19. Agent 2 denied that the DEA operations involved ransom. Agent 2 Dep., 8/12/87, at 188. He stated that the large payments were "bribes" and could not be ransom because "[a] ransom has to be solicited." (*Id.* at 193). In discussing the $1 million per hostage figure that was contemplated for the May 1986, rescue effort (see below), Agent 2 maintained that this money was intended only for those who were "corruptible." (*Id.* at 196). Agent 2 also testified, however, that he could not be sure that some of these monies would not be given to the individuals were responsible for the kidnappings. (*Id.* at 194). Agent 2 testified that the possibility that the payment of monies would create an incentive for more kidnappings was discussed and it was concluded that "[w]e'd just have to take our shot." (*Id.* at 199).

20. Agent 1 Dep., 8/12/87, at 14.

21. C9300, CIA document: Agent 1 Dep., 8/12/87, at 32.

22. C9296-C9300, C9299, C9297-98, C9296.

23. Azzam Int., 5/26/87.

24. *Id.*

25. *Id.*

26. Earlier Perot had tried to donate a plane to DEA which Azzam had refused. Azzam was therefore aware of Perot's efforts to aid law enforcement. Id.

27. *Id.*

28. C9259.

29. Azzam Int., 5/26/87.

30. C9282-84, CIA Report on Buckley Proof dated May 15, 1985.

31. Azzam Int., 5/26/87.

32. C9282-84, CIA Report on Buckley Proof, dated May 15, 1985.

33. Azzam Int. 5/26/87.

34. Clair George Test., *Hearings*, 100-11, at 235-236; See also Clair George Dep., 4/24/87, at 60.

35. Agent 1 Dep., 8/12/87, at 62-64.

36. North Notebooks, 5/22/85, Q1854-56.

37. Id., Q1855.

38. *Id.*

39. North Memo, 6/7/85, to McFarlane, at 2; Ex. 38A (RCM).

40. *Id.*

41. Clair George Dep., 4/24/87 at 57-58.

42. Ex. 38A. (RCM). McFarlane testified that he never discussed this matter with the President.

43. McFarlane Test., *Hearings*, 100-2, at 45.

44. McFarlane Test., *Hearings*, 100-2, at 45.

45. Poindexter Test., 7/15/87 at 187; 7/17/87, at 148.

46. Ex. EM-2, Hearings.

47. Yet, when asked by the House Judiciary Committee on March 5, 1987, if he knew of the plan, the Attorney General testified he knew only that the DEA agents were collecting information. (Meese Test., House Committee on the Judiciary, March 5, 1987, Ex. EM-5, at 54-55.) However, in testimony at the Joint Hearings, Meese claimed he was unaware only of any "ransom" plan as opposed to plans to bribe foreigners. (Meese Test., 7/29/87, at 222-23.) Meese repeated his prior testimony that he was not aware of the operational role of the DEA agents, although the memo he received from North stated that the agents would rent a safehouse and open a bank account. (*Id.*) The Attorney General did not consider such activities to be operational, although the head of the DEA, John Lawn, does. (Lawn Dep., 8/20/87, at 49.)

48. Lawn Dep., 8/20/87 at 10-11.

49. Agent 1 Dep., 8/12/87 at 85-86.

50. Agent 1 Dep., 8/28/87 at 47-50.

51. Agent 1 Dep., 8/12/87 at 79.

52. Agent 1 Dep., 8/28/87 at 95-97.

53. Brother Int., 6/3/87.

54. Agent 2 Dep., 8/12/87 at 94; North Notebooks, 6/6/85, Q1895.

55. Agent 1 Dep., 8/28/87 at 99-102.

56. Agent 1 Dep., 8/28/87 at 106.

57. The Hostage Location Task Force is to be distinguished from the Hostage Locating Task Force referred to earlier. The former was a short-term entity headed by Charles Allen and included staff members on loan from other agencies. Some of these staff members worked full-time and were physically located at CIA. Its purpose was to define the options available to deal with the hostages held in Lebanon. (DIA Major Dep., 7/2/87, at 48). The Hostage Locating Task Force, by contrast, was an interagency group that met only periodically. Its purpose was to share information relating to hostages. (*Id.* at 8).

58. DIA Major Dep., 7/2/87, at 35.

59. DIA Major Int., 6/10/87.

60. *Id.* at 43.

61. *Id.* at 74.

62. *Id.* at 73.

63. DIA Major Int., 6/10/87.

64. Agent 1 Dep., 8/28/87, at 131-32.

65. DIA Major Int., 6/10/87.

66. Allen Dep., 4/21/87, at 93-94. In fact, Allen told FBI Executive Assistant Director Oliver "Buck" Revell in April 1987, that he did not even know the DEA agents. (Memo from Revell to Webster dated May 7, 1987, FB002889-90; Revell Dep. 6/11/87 at 29.)

67. The Major assumed that North meant that the President was willing to commit illegal acts to gain the release of the hostages. The Major did not believe the statement. DIA Major Dep., 7/2/87, at 101-02.

68. DIA Major Dep., 7/2/87, at 128.

69. *Id.* at 128.

70. N7437, DIA Major Hostage Memo.

71. DIA Major Dep., 7/2/87, at 115-17.

72. N7437, DIA Major Hostage Memo.

73. DIA Major Dep., 7/2/87, at 117.

74. *Id.* at 142.

75. Agent 2 Dep., 8/12/87, at 188. Agent 2 testified that the operation was planned to occur in the May-June time frame and that he kept North apprised of developments. *Id.* at 204. Secord testified that North enlisted him to assist in the DEA effort "just before" the Tehran mission began. Secord Test., *Hearings*, 100-1, 5/6/87, at 111.

76. Agent 1 Dep., 8/28/87, at 136-37.

77. The bank records of Hyde Park Square Corp., one of the corporations within the Enterprise, disclose a withdrawal on May 19, 1986 of $30,150.

78. Agent 1 Dep., 8/28/87 at 138.

79. Agent 1 Dep., 8/28/87, at 147. In an apparent reference to the Sixth Fleet, Agent 1 speaks erroneously of North obtaining assistance from "The Seventh Fleet or something like that."

80. North had pursued a similar course in an attempt to obtain the release of Peter Kilburn, an American citizen who was the librarian at the American University in Beirut. Kilburn was kidnapped on November 30, 1984, by a different group. A source indicated in the summer of 1985, that he could gain access to Kilburn in exchange for cash. North turned to Perot to provide $100,000 in cash and eventually $1 million to obtain Kilburn's release. This time, Coburn provided $100,000 in cash, all of which was eventually given to the intermediary. Kilburn was killed by his captors after the U.S. bombing raid on Libya on April 15, 1986, before the rescue attempt could be carried out.

81. See also *Erria* Section.

82. McFarlane Dep., 7/2/87 at 82.

82a. President to Perot Letter, 6/11/86, N4247.

83. Lawn Dep., 8/20/87, at 53.

84. The DEA agents had other experiences with people involved with North's network. Sometime in 1986, Fawn Hall asked Agents 1 and 2 to meet with Michael Ledeen. They met at Ledeen's office. Ledeen told them he was a very good friend of North's. Ledeen said he had a $30,000 contract with Continental Airlines and he wanted to know how he could stop DEA from seizing their airplanes if cocaine was discovered on board. (*Id.* at 170.) The agents arranged for Ledeen to meet the DEA regional director in Miami regarding the problem. Robinette told them, on another occasion, that he was retained by Clines to investigate a civil suit filed against Clines and others alleging assassination plots and drug dealing in Central America. (*Id.* at 158.) Agent 1 told him he knew very little about the drug situation down there. Later, Robinette called him to ask him to check out Ted Shackley. Agent 1 referred him to his brother for investigative work. In December 1986, Albert Hakim called Agent 3 in Switzerland. Hakim told Agent 3 that he had an Iranian business associate who was in the hospital construction business who had to accompany him to the United States on business. (Agent 3 Dep., 5/13/87, at 60.) Hakim asked if Agent 3 could assist this Iranian in getting a visa to the United States. Agent 3 said he could not. Agent 3 asked Hakim if he was working for any government agencies, and Hakim said he was still working with the CIA. (*Id.*) Agent 3 suggested that in that case he should seek CIA assistance in getting his associate travel papers.

85. 31 U.S.C. Sec. 3302.

86. 16 Comp. Gen. 911 (1937).

87. 31 U.S.C. Sec. 3302.

88. McFarlane Dep., 7/2/87, at 78-79.

89. North Test., *Hearings*, 100-7, Vol. 2, at 185-86; McFarlane Test., *Hearings*, 100-7, Vol. 2, at 212-13.

90. Meese Test., *Hearings*, 100-9, at 388.

91. *Id.*, at 10.

92. McFarlane Dep., 7/2/87, at 80.

93. Agent 2 Dep., 8/12/87, at 76-77.

94. *Id.* at 77.

95. Footnote omitted.

96. Agent 1 Dep., 8/12/87, at 79.

97. Meese Dep., 7/8/87, p. 169.

98. Meese phone Logs; 12/3/86 Richardson's notes, 9089.

99. Lawn Dep., 8/20/87, at 45.

100. *Id.*, at 112-14.

101. *Id.*, at 127.

102. *Id.*, at 115.

103. Footnote omitted.

104. George Dep., 4/24/87, at 63.

105. McMahon Dep., 6/1/87, at 69.

106. The DEA operation lacked authorization pursuant to a Finding as required under Executive Order 12333.

107. Secord Test., Hearings, 5/7/87 at 188.

108. North Test., 7/8/87, at 32; North Test., Closed Session, 7/9/87 at 9.

109. North Test., Closed Session, 7/9/87 at 5-11.

110. North Notebooks, 1/9/86, Q1429.

111. North Test., Closed Session; July 9, 1987 at 5-8, 11. North testified about the projects in Executive Session of the Committees.

112. Poindexter Test., 7/15/87 at 144-145.

113. North to Poindexter, memorandum, "Follow-on Meeting with Amiram Nir," September 15, 1986, N2927.

114. See generally Poindexter Test., 7/15/87, at 160-64; Ex. JMP 58; Ex. OLN 303.

115. North Notebooks, 11/19/85, Q1319.

116. North, PROF note, 6/3/86 at 1142-43, to Poindexter, N12543.

117. North Closed Test., 7/9/87, at 64.

118. DIA Major Dep. 7/2/87, at 9-14; U.S. Congress, House Select Committee to Investigate Covert Arms Transactions With Iran, internal memorandum, Robert A. Bermingham to John W. Nields, Jr., Subj: Joint Effort to Rescue Peter Kilburn (September 7, 1987); New York Times 3/2/87.

119. North Test., Closed Session, 7/9/87, at 18.

120. North Test., 7/9/87, at 18-19.

121. ER33.

122. Herup Int., 4/29/87, at 1.

122a. Danish law prohibits the sale of arms to states at war.

123. Poindexter Test., 7/15/87 at 149-51.

124. North Test., Hearings, 7/10/87, at 93-95.

125. There was no contact between the two vessels. The unidentified ship followed the *Erria* for two days and then departed.

126. The commercial Bill of Lading shows the destination as a Central American port; however, the true destination of the cargo was a different Central American port. The ship arrived at that port on June 2, 1985. ER0001-02.

127. Dolmy Business, Inc., was organized as a corporation under the laws of Panama, on September 11, 1985. ER03-09; ER10-12. See also: the Memorandum of Agreement and Bill of Sale covering the *Erria*. ER13-17; ER18-19.

127a. OLN Ex.-286.

128. C9605. Items for discussion at DCI meeting with Poindexter on 5/15/86.

129. N43472 (Memo from Cannistraro to Poindexter "Agenda for weekly meeting with DCI," 5/14/86.)

130. See summary log of the *Erria*, at ER0021; *Erria* log book, at ER0023-30; and ship's position May 23-29, as reflected on page 14 of the *Erria* log book, at ER0031.

131. At this point, Albert Hakim and Dolmy Corporation owed SA Chartering $32,000 for fuel and wages, and it was for the purpose of collecting this debt that Tom Parlow directed Captain Herup to return to Copenhagen. Parlow sent a telex to CSF, stating falsely that SA Chartering had the vessel impounded for non-payment of account. CSF then promptly wired money to SA Chartering which was drawn against Dolmy's Credit Suisse account.

132. Herup, Int., 4/29/87 at 68; Staff memo on Coastal Freighter *Erria*, 3/4/87, at 5; "National Syrian tied to North." B. Sun, 4/20/87, at 1A, 9A.

133. Staff memo on Coastal Freighter *Erria*, 3/4/87, at 5.

134. See Chapter 22.

135. SC4104, Secord letter to Liman and Nields, "Arms Sales Profit Analysis," at 2.

136. Herup Int., 4/29/87, at 6-7.

137. Staff memo on Hakim/Secord ownership of *Erria* arms cargo, 4/30/87, at 2; C4803-C4807, H87. The CIA did not get the whole cargo for that price. Some of the munitions were diverted by the intermediary, for use by North for other covert activities.

138. The transfer of the *Erria*'s cargo took place in Cherbourg, France. Five of the ship's containers were destined for one U.S. port, and 22 containers were destined for another U.S. port. See loading diagram at ER34. The relevant shipping documents, including cargo declaration, manifest, identification of crew, etc., at ER35-42, ER43-4.

139. ER32. See also Herup Int., 4/29/87, at 10.

Part VI
Conclusions and Recommendations

Chapter 24
Covert Action in a Democratic Society

The Iran-Contra Affair raises fundamental and troublesome questions about the secret intelligence operations of the U.S. Government. Can such operations, and particularly covert action, be authorized and conducted in a manner compatible with the American system of democratic government and the rule of law? Is it possible for an open society such as the United States to conduct such secret activities effectively? And if so, by what means can these operations be controlled so as to meet the requirements of accountability in a democratic society?[1]

These questions became the center of public debate in the mid-1970s, after revelations of controversial Central Intelligence Agency (CIA) activities and extensive investigations by a Presidential Commission and Select Committees of the House and the Senate.[2]

The result of those inquiries was a concerted effort by the executive and legislative branches to adopt laws and procedures to control secret intelligence activities, including covert actions, and to ensure that they would be conducted only with the prior authorization of the President and timely notice to Congressional committees specially constituted to protect the secrecy necessary for effective operations.

Experience has shown that these laws and procedures, if respected, are adequate to the task. In the Iran-Contra Affair, however, they often were disregarded. The flexibility built into the legislation and rules to allow the executive branch to deal with extraordinary situations was distorted beyond reasonable bounds. Laws intended to reflect a spirit of comity between the branches were abused when that commitment to cooperation was abandoned.

The Director of the Central Intelligence Agency, William J. Casey, and other Government officials showed contempt for the democratic process by withholding information that Congress was seeking and by misrepresenting intelligence to support policies advocated by Casey.

What Is Covert Action?

The term "covert action" refers to a specific type of clandestine activity that goes beyond the collection of secret intelligence.[3] It is an attempt by a government to influence political behavior and events in other countries in ways that are concealed.

Covert action is not defined in statute. Executive Order 12333, however, issued by President Reagan in 1981, refers to covert action as special activities which are defined as:

> Special activities mean activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States government is not apparent or acknowledged publicly, and functions in support of such activities . . . .[4]

This definition excludes diplomatic activities, the collection and production of intelligence, or related support functions. The Executive order also provides that the authorized special activities may not include activities that are "intended to influence United States political processes, public opinion, policies, or media."[5]

Peacetime covert action became an instrument of U.S. foreign policy in response to the expansion of Soviet political and military influence following World War II. The overt U.S. policies at that time included the commitment of military assistance under the Truman Doctrine, the surge of economic aid through the Marshall Plan, the efforts to establish a democratic regime in West Germany, and the dramatic airlift to break the Soviets' Berlin blockade. Accompanying the overt policies were covert actions designed to counter Soviet political influence and to prepare for behind-the-lines resistance in case of a Soviet invasion of Europe. When a Communist-organized coup overthrew the Government of Czechoslovakia in February 1948, and a series of general strikes orchestrated by Communist-controlled labor unions swept Western Europe, U.S. officials decided that this covert political action and support should be intensified to reinforce the still-fragile free institutions of the postwar world.[6]

In this atmosphere, President Truman directed the development of a covert action capability. A 1948 National Security Council Directive, NSC 10/2, defined covert actions to be:

> propaganda; economic warfare; preventive direct action, including sabotage, anti-sabotage, demolition and evacuation measures; subversion against hostile states, including assistance to underground resistance movements, guerrillas and refugee liberation groups, and support of in digenous anti-communist elements.[7]

Since 1948, U.S. covert actions have included most of these activities.

What makes such activities "covert" is not their effect, but their implementation in a manner permitting "plausible denial," a concept that NSC 10/2 also codified. U.S. action in support of indigenous groups were to be:

> so planned and executed that any U.S. government responsibility for them is not evident to unauthorized persons and that if uncovered the U.S. Government can plausibly disclaim any responsibility for them.[8]

This concept was an important element in the measures which the Truman and Eisenhower Administrations implemented to strengthen democratic trade unions, the fledgling postwar political parties, and the free press in the war-ravaged parts of the world. For American support had its own danger: it might have tainted the recipients and exposed them to charges of being in the service of "Yankee imperialism." Means had to be found to camouflage the American connection. Financing and other support, in case of unwelcome publicity, was to be nonattributable to the U.S. Government, and allegations about such support were to be deniable in a plausible manner.

As originally defined in NSC 10/2, "plausible denial" meant concealing the U.S. Government's role from unauthorized inquiry—not avoiding responsibility and accountability to other agencies of the Government, including Congress. One of the main issues identified by Congressional investigations in the mid-1970s, however, was the misuse of "plausible denial."[9]

Covert Action and the Law

Covert action operations pose challenges for the political processes of the United States. As with other secret intelligence programs and more sensitive defense projects, appropriations and expenditures of these operations must necessarily be kept from the public domain. Thus, covert assistance to foreign governments and groups does not receive the open debate other assistance programs do.

Paramilitary covert actions are in the "twilight area"[10] between war, which only Congress can declare, and diplomacy, which the President must manage. This type of activity is especially troublesome as a constitutional separation of powers issue.

While covert actions can be legitimate instruments of foreign policy, they can, if inconsistent with the national policy, undermine U.S. interests abroad. Even if the covert action is consistent with U.S. policy, disclosure sometimes can be harmful to U.S. interests.[11]

The executive and legislative branches have agreed that covert actions must be subject to specific legal controls. Statutes, executive orders, and national security directives establish a framework for the authorization and conduct of these activities. The system was intended to insure careful review and accountability and to meet the practical need of securing political support.

The National Security Act of 1947[12] created both the National Security Council (NSC) and the Central Intelligence Agency. The law authorized the CIA to advise the NSC on intelligence matters, to correlate and evaluate intelligence, and "to perform such other functions and duties related to intelligence affecting national security as the National Security Council may from time to time direct." While Congress has never provided specific authority for the CIA or any other elements of the Government to conduct covert actions, it has continued to appropriate funds for these activities.

When Secretary of Defense James Forrestal asked the Director of Central Intelligence (DCI) in 1947 whether the CIA was empowered to conduct covert activities, the Director replied that the CIA could do so if the NSC approved the activities and Congress appropriated funds to carry them out.[13]

A CIA's legal counsel put it in similar terms:

> If the President gave us a proper directive and Congress gave us the money, we had the administrative authority to carry out [covert actions].[14]

In 1948, NSC 10/2 established the first administrative mechanism for the approval of covert actions at a senior interagency level, with the participation of officials from the White House, the State Department, the Defense Department, and the CIA.

The Eisenhower Administration tightened and formalized procedures for control of covert action by creating the "5412" Committee for the review and supervision of covert activities. The Department of Justice was to review covert action proposals before they were submitted to the NSC.

The "5412" Committee of the Eisenhower era became the "303" Committee of the Johnson Administration and the "40" Committee under President Nixon[15] but the essential procedures remained the same: a proposal for covert action was reviewed and analyzed by an interagency committee, resulting, if approved, in an NSC directive from the President and the review of the expenditure by a Congressional committee.

Congressional oversight was by consensus. A series of personal relationships developed between the directors of the CIA and the chairmen of the Congressional Committees dealing with Appropriations and Armed Services.[16] There was trust and mutual respect along with a bipartisan agreement across a broad spectrum of foreign policy, although since the mid-1950s there were pressures from within and outside Congress to establish more clearly defined forms of Congressional oversight for intelligence activities.

After public allegations of CIA efforts to "destabilize" the Allende regime in Chile,[17] Congress sought to insure Presidential accountability for covert actions and notification of all appropriate Congressional committees, including those on foreign affairs. The Hughes-Ryan Amendment of 1974 provided:

> No funds appropriated under the authority of this chapter or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States.[18]

The Hughes-Ryan Amendment also required the President "to report, in a timely fashion, a description and scope of such operations to the appropriate committees of Congress." There were six such committees at that time.

Further allegations of CIA involvement in unlawful domestic activities prompted President Ford to establish a commission, chaired by Vice President Rockefeller, to evaluate certain past CIA practices.[19] In January 1975, President Ford indicated "off the record" that he had discovered CIA involvement in assassination conspiracies that "would blacken the reputation of every President after Harry Truman."[20] The story did not stay off the record for long and there was a public outcry. Shortly thereafter, the Senate established a temporary Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Committee),[21] and the House of Representatives created its own temporary Select Committee on Intelligence (the Pike Committee).[22]

The investigations by the Church Committee in 1975 and 1976 failed to turn up proof that Presidents had ordered assassinations of foreign officials, but some senior officials indicated it was their belief that some Presidents had secretly approved such activities.[23] Many in Congress felt that the problem was not so much that the CIA was undertaking covert action without the proper authority, but that Executive approval had been given in a deliberately ambiguous manner.

Congress responded with the Hughes-Ryan Amendment[24] which altered the approval process of CIA covert action operations. By requiring that the President personally approve all covert actions as important to the national security, Congress sought to make the President responsible for all covert operations. The U.S. Government might still be able to deny publicly the responsibility for specific actions, but within the Government there would be an accountable source of authority—the President.[25]

By 1977, both Houses of Congress established permanent select committees for intelligence oversight. This increased from six to eight the number of "appropriate committees" to be notified under the terms of the Hughes-Ryan Amendment.[26] The resolution establishing the Senate Select Committee on Intelligence expressed the sense of the Senate that the Committee should be notified of "significant anticipated intelligence activities." The term was intended to ensure that notice of Presidential Findings under the Hughes-Ryan Amendment would occur prior to the implementation of the operation.

The Executive branch also established new procedural controls over covert action operations. President Ford's Executive Order 11905[27] set up an NSC Committee to review covert action proposals prior to their submission to the President and to conduct "periodic reviews of programs previously considered" by the Committee.[28] The Committee was composed of the NSC principals, the National Security Adviser, the Attorney General, and the Director of the Budget, or their representatives.

An Intelligence Oversight Board was created to assess reports of illegality and impropriety in the activities of the intelligence community and to report its evaluations directly to the President. The CIA was authorized to carry out covert actions as directed by the President only when these were "within the limits of applicable law."

President Carter carried forward similar procedures in his Executive Order 12036, issued in 1978.[29] The Carter Order added the provision that designated the CIA as the sole agency to carry out covert action unless the President directed otherwise. It also required that the Congressional oversight committees be kept informed of "significant anticipated intelligence activities" in a manner consistent with constitutional authorities and duties of the executive and legislative branches.

In 1980, Congress replaced the notification provisions of the Hughes-Ryan Amendment by amending the National Security Act of 1947 to add a new section 501 on Congressional oversight of intelligence activities.[30] For the first time, the language on notice of "significant anticipated intelligence activities" was written into law.

Under the new law, notification had to be given only to the Intelligence Committee of each house, rather than to eight committees. Moreover, in extraordinary circumstances affecting the national interests of the United States, the President may choose to limit prior notice to the chairmen and ranking minority members of the Intelligence Committees and the majority and minority leaders of the two Houses, a total of eight Members.

The law provided that the Committees were to be notified in a "timely fashion" of any covert action for which prior notice was not given.[31] The 1980 report on this provision by the Senate Intelligence Committee states:

> The Senate Select Committee and the Executive Branch and the intelligence agencies have come to an understanding that in rare, extraordinary circumstances if the President withholds prior notice of covert operations, he is obliged to inform the two Oversight Committees in a timely fashion of the action and the reasons for withholding such prior notice.[32]

According to the Committee report, the law was a compromise intended to codify the "practical relationship" that "the Executive Branch and the intelligence oversight committees had developed based on comity and mutual understanding, without confrontation" and thus to "carry this working relationship forward into statute."[33]

Although the law gave the President some flexibility on notification, there was no exception from the requirement for a Presidential Finding as a precondition to all covert action operations. Presidential accountability remained the cornerstone of the system of control over covert actions.

When President Reagan took office, he pledged to revitalize U.S. intelligence and to dispel the "suspicion and mistrust . . . [that] can undermine this nation's ability to confront the increasing challenge of espionage and terrorism."[34]

As part of the effort to restore confidence, the President issued Executive Order 12333[35] in which he eased some of the restrictions on CIA activities. The new order pledged continued obedience to the law and retained the provision that only the CIA could conduct covert actions in peacetime unless the President designated another agency to do so. The Executive Order also applied the Hughes-Ryan Amendment's Finding requirement to all covert actions, not just to those of the CIA.[36]

In keeping with standard American political processes, a basic structure of covert action procedures evolved within the law. A system of interlocking statutes, executive orders, and national security directives had been established by three successive Administrations.

Despite occasional problems, this system has proved workable. The Administration has notified the oversight Committees of its proposals including those of great sensitivity in which lives might be in danger in event of disclosure. In fact, "the Committees have received advance notification of every presidential finding but for the two involving the attempted rescue of our hostages in Iran in 1979-80 and the NSC initiative in 1985 and 1986."[37] The President and senior intelligence officials have indicated to Congress their satisfaction with the Oversight Committees' role and with the prevailing procedures, which also protect the CIA from charges that its actions are unauthorized. Indeed, the procedures implemented by the Executive and by Congress preclude the possibility that the intelligence agencies would be blamed for activities for which elected officials might wish to deny responsibility.

These mechanisms were a significant achievement of bipartisan, interbranch cooperation. But they required continuing adjustment in light of experience with existing procedures. One such adjustment occurred in 1984 following public disclosure of the mining of the Nicaraguan harbors. The Intelligence Committees had not been adequately briefed by the CIA on the anticipated escalation of U.S. involvement in Nicaragua.[38] This subsequently led to an agreement between the Senate Intelligence Committee and the Director of Central Intelligence, known as the Casey Accords, formalizing the requirement that the Director report any significant anticipated intelligence activity, including instances in which the activity would be part of an ongoing program.[39] The agreement also institutionalized various reporting requirements to ensure more substantive briefings, improve oversight of broad Findings and bring potential treaty and legal repercussions to the attention of the Members.

For the goals of this system of accountability and oversight to be fulfilled, several steps had to be taken. First, the President had to approve specifically, and accept responsibility for, each covert action by signing a Finding before the operation proceeded. Second, the Congressional Intelligence Committees had to be notified either before the operation began or in a "timely fashion" thereafter. Third, for oversight of intelligence activities to be meaningful, intelligence officials had to respond candidly to Congressional inquiries and provide Congress and officials in the executive branch with objective intelligence analyses so that proposed actions could be evaluated objectively.[40]

In the Iran-Contra Affair, the principles of this process of accountability and oversight would get their severest test.

Misuse of Findings

The Findings process was circumvented. Covert actions were undertaken outside the specific authorizations of Presidential Findings. At other times, covert actions were undertaken without a Presidential Finding altogether. Actions were undertaken through entities other than the CIA, including foreign governments and private parties. There were claims that the Findings could be used to override provisions of the law. The statutory option for prior notice to eight key congressional leaders was disregarded throughout, along with the legal requirement to notify the Intelligence Committees in a "timely fashion."

"Stretching" Findings

On December 1, 1981, President Reagan signed a Finding that authorized certain covert action programs in Central America, particularly in Nicaragua.[41] The Finding is directed toward the Cuban presence in Nicaragua and Central America generally. This conflicts with the Administration's explanation of the Finding which emphasized its purpose as the interdiction of arms from Nicaragua to the leftist insurgents in El Salvador. Yet, under the aegis of this Finding, the CIA provided assistance to Eden Pastora's rebel forces in the south of Nicaragua, far from El Salvador. The stated goal of these forces was the overthrow of the Sandinista Government.[42]

Destabilizing the Sandinistas in Nicaragua was a different goal from arms interdiction to El Salvador.[43] Director Casey, however, declined to seek a new Finding that properly distinguished between these two objectives.

If a Finding signed by the President and presented to the Intelligence Committees for one purpose can be used for another, the Finding and notification processes become meaningless. In fact, while Casey was Director of Central Intelligence, CIA personnel attempted to craft Findings in terms so broad that they would not limit the CIA's freedom to act.[44] Judge Sporkin, the General Counsel of the CIA, analogized the formulation of Findings to the preparation of a securities prospectus where the corporate purposes are broadly stated to give management discretion to carry out a wide range of activities.[45] Viewed in this way, a Finding becomes a blank check for the intelligence agency and defeats the notion of Presidential accountability under the Hughes-Ryan law. At this point, it ceases to be a self-limiting document confined to a specific program.

Dispensing with Presidential Findings

In reaction to the adoption of the second Boland Amendment in October 1984, the NSC staff took an increasingly active role in support of the Contras. The NSC staff raised money for the Contras and, with Richard Secord's assistance, created an organization outside the Government to procure arms and resupply the Contras.[46] While the President has said that supporting the Contras was his own idea,[47] he told the Tower Board that he was unaware that the NSC staff was directly assisting the Contras.[48] In any event, there was no Presidential Finding authorizing these activities. National Security Adviser Robert C. McFarlane testified that he was unaware of the magnitude of Oliver North's operation[49] although both North and Admiral John M. Poindexter disputed McFarlane's denials.[50]

Efforts coordinated by North to ransom hostages constituted another instance in which the legal requirements for a Finding were dispensed with. This was in contravention of the President's own directive, Executive Order 12333, which provided specifically that all covert actions be contained in Presidential Findings. Not only was a Finding dispensed with, but funds to support the operation were raised from private sources. The operation was pursued despite the objection of CIA and some DEA officials, and Congress was not notified.

There was also no written Finding when the CIA became involved in the covert shipment of arms to Iran in 1985. As McFarlane subsequently expressed, "[t]he President was all for letting the Israelis do whatever they wanted to do."[51] In November 1986, McFarlane asserted that the Attorney General had opined that U.S. participation in the initial Israeli shipments could be justified on the grounds that the President had made a "mental Finding."[52] The Attorney General testified to his view that the President's concurrence was tantamount to an oral Finding and thus sufficient legal authorization for the program.[53]

The December 1985 Finding sought to authorize retroactively the CIA-assisted shipment of arms in November 1985. It was drafted after the shipment was made; presented to the President at the request of Casey and urging of CIA Deputy Director John McMahon; and then signed by the President without the normal full staffing of relevant senior Administration officials.[54] This process ignored a central purpose of the Finding requirement which is to ensure that the President fully authorizes a covert action before it begins and is accountable for its implementation.[55] Further, the "unless and until" language of the Hughes-Ryan Amendment clearly required a Finding before the CIA could proceed.

The use of Findings to ensure Presidential responsibility for covert action operations also was disregarded in the diversion of money from the Iran program to the Contras, which itself was never authorized by a Finding. Neither the January 17, 1986, Finding relating to the Iran arms sales, nor any Finding relating to assistance to the Contras authorized the diversion of funds. Poindexter testified that he believed the diversion would become politically controversial if exposed, so he decided not to tell the President in order to give him "deniability."[56]

Poindexter testified that he destroyed the only signed copy of the December 1985 Iran Finding in November 1986 to spare the President political embarrassment.[57] However, when the President signed that Finding—which was written as a straight arms-for-hostages operation—he accepted responsibility for his decision. Along with that responsibility came the risk that the public might disapprove of the decision if it were ever revealed. In destroying the record of the President's post hoc approval of the November 1985 shipment, Poindexter also sought to destroy the proof of Presidential accountability that the law seeks to achieve.

Using Findings To Avoid Laws

At times, certain members of the Administration used Findings to avoid legal requirements. A project to stockpile weapons for the Contras is a case in point.

In the summer of 1983, the CIA feared that Congress might refuse to appropriate funds for the Contras in the next fiscal year 1984. The Agency thus devised a way of bypassing the appropriations process: the Department of Defense (DOD) would secretly transfer military equipment to the CIA without charge. The Agency would then dispense the equipment to the Contras in the following fiscal year even if Congress cut off aid. To justify its request, the CIA pointed to the broad Presidential Finding authorizing assistance to the Contras even though nothing was said in that Finding about a donation of DOD materiel to the Contras through the CIA.

The Finding that was supposed to enhance control over covert action operations was invoked to justify an evasion of one of the Constitution's most fundamental safeguards, the dependence of the executive branch upon Congress for specific appropriations. In the end, the proposal was not implemented because DOD would not transfer the equipment to the CIA free of charge.

In the Iran initiative, the Administration also used the Finding to avoid compliance with the laws regulating the export of arms. When the January 17, 1986, Iran Finding was under consideration, CIA, DOD, and Justice Department lawyers addressed the question of whether the Finding could authorize CIA arms transfers without regard to the restrictions on arms transfers under the Foreign Assistance Act and the Arms Export Control Act. In 1981, Attorney General William French Smith had taken the position—based on an analysis by the State Department Legal Adviser—that the restrictions of those statutes applied only to transfers undertaken pursuant to them; the President, however, could approve a transfer "outside the context of those statutes" by utilizing the Economy Act and the National Security Act.[58] Nonetheless, the Smith opinion recognized the Congressional reporting requirements applicable in any event, and specifically concluded that "the House and Senate Intelligence Committees should be informed of this proposal and the President's determinations."[59]

When the Smith opinion was considered in the context of the Iran Finding in January 1986, its requirement of at least some form of prior Congressional notification was ignored. Instead, a memorandum from Poindexter to the President describing the Finding characterized that opinion as concluding "that under an appropriate finding you could authorize the CIA to sell arms to countries outside of the provisions of laws and reporting requirements for foreign military sales."[60] Poindexter's memorandum recommended to the President "that you exercise your statutory prerogative to withhold notification . . . to the Congressional oversight committees until such time as you deem it to be appropriate."[61]

Later in 1986, after the Iran Finding was executed, the Arms Export Control Act was amended to ban all arms exports under the Act to countries that supported terrorism, unless there was a Presidential waiver and a report to Congress.[62] Administration officials, however, continued to rely on the Finding as the controlling authority, despite the fact that Iran was a designated terrorist country.

The former General Counsel of the CIA testified that under the Administration's interpretation, a Finding would justify arms transfers that occurred even after the 1986 amendment.

> Q. "The impression was left somehow that if we decided to go 'black' or covert, we don't have to comply with other provisions of the law. Would that be your interpretation as well?"
>
> A. "Well . . . they give the President an opportunity to, through a different regime, to do it that way, so that you can avoid the other problems. Yes. I think that is an accuracy."
>
> Q. "I have some difficulty with that interpretation because there is nothing in the Hughes-Ryan Act which suggests that somehow [a Finding] would preempt the other provisions of the law. . . . If we had the Arms Export Control Act, had a flat prohibition on the sale of arms to countries who sponsor terrorism and we listed Iran as one of those countries that sponsor terrorism, could the President legally sign a covert action [finding] permitting the CIA to ship arms to Iran?"
>
> A. "I think that is what we said in this case. . . . I mean that was the interpretation that you could have that, that [it] could be done. That is what covert action is, Senator. It is an ability of the Government. You see you are not defeating anything because the system requires there be notification to Congress."[63]

It is unreasonable, however, to interpret the Smith opinion as providing a justification for avoiding all of the various requirements of the Arms Export Control Act and the National Security Act. Moreover, Executive Order 12333 does not, and legally could not, authorize U.S. intelligence agencies to conduct activities in violation of the laws of the United States.[64] The argument that covert action pursuant to a Finding may proceed without regard to certain statutory restrictions applicable to other Government programs is not the same as an argument for exemption from all Federal statutes.

Moreover, the Administration also used the January 17 Iran Finding to override statutory Congressional notification provisions. As explained above, the President was informed that this new Finding could justify arms transfers without any prior notification to Congress, including the limited notification to the chairmen and ranking minority members of the Intelligence Committees and the majority and minority leaders of the two Houses. At best, the President was given misleading advice. Findings were intended to subject covert action to the accountability of the constitutional system, not to supplant law.

Not Playing It Straight With Congress

The concept of Presidential responsibility was not the only principle undercut during the Iran-Contra initiative. Accountability to Congress for intelligence operations also was ignored. For Congress to exercise its constitutional and statutory responsibility for oversight, it must first be notified of significant intelligence activities and then be given truthful and comprehensive information about them.

Misleading Testimony

Congress was not notified of either the Iran initiative or the NSC staff's covert operation in support of the Contras. Senior intelligence officials, including the Director of Central Intelligence, misled Congress, withheld information, or failed to speak up when they knew others were giving incorrect testimony.

For example, Clair George (CIA Director for Operations), the CIA's Chief of Central America Task Force (C/CATF), and Elliott Abrams (Assistant Secretary of State), testified in October 1986, before the House Permanent Select Committee on Intelligence (HPSCI) on the shooting down of the Hasenfus flight. Abrams testified that the U.S. Government was not involved in the Hasenfus operation.[65] George and the C/CATF knew that the testimony was incorrect, but neither corrected Abrams. George later apologized to the Select Committees:

> I was surprised that Abrams made that statement. It was so categorical. The question is, should I step up and say "hold it, Elliott, what about—excuse me, all you members of the HPSCI, but Elliott and I are now going to discuss what we know about" and I didn't have the guts to do it or I didn't do it.[66]

George's own testimony to the Senate Foreign Relations Committee also was inaccurate. Unaware of the activities of one of his field officers, he stated that the CIA was not involved "directly or indirectly in arranging, directing, or facilitating resupply missions conducted by private individuals in support of the Nicaraguan democratic resistance."[67] Similarly, the C/CATF told the Select Committees that his testimony at the same was "narrowly defined,"[68] thus reinforcing the impression that U.S. officials had no role in the private resupply operation. He explained that he:

> could have been more forthcoming to the [Senate Foreign Relations] Committee, but I frankly was not going to be the first person to step up and do that . . . so long as others who knew the details, as much as I, who knew more than I, were keeping their silence on this, I was going to keep my silence.[69]

He elaborated: "I was a member of the team, I was a member of the Administration team . . . my frame of mind was to protect, was to be a member of the team . . . and to do it without lying, try to go through as best we could."[70] While the C/CATF maintained that he was able to give technically correct answers, he conceded that he knew that the testimony of George and Abrams was mistaken. He testified that his loyalty to the Administration prevented him from correcting the record when the Committees suggested that he place his allegiance above his responsibilities as a professional intelligence officer. The C/CATF explained that Congress' request for information put him in a "giant nutcracker" between the Administration, to which he felt a primary duty, and Congress, which counted on the CIA to provide objective information.[71]

A pattern developed in the CIA of not seeking information that could cause problems for Administraton policy if it had to be revealed to Congress. When CIA stations abroad reported on General Singlaub's efforts to purchase arms and ammunition for the Contras, North reported to McFarlane on February 6, 1985, that "[two countries] have indicated . . . that they want to help in a 'big way'. Clair George (CIA) has withheld the dissemination of these offers and contacted me privately to assure that they will not become common knowledge."[72]

Deputy Director Gates told the Senate Intelligence Committee: "Agency people . . . from the Director on down, actively shunned information. We didn't want to know how the Contras were being funded . . . we actively discouraged people from telling us things. We did not pursue lines of questioning."[73] When Gates first heard Charles Allen's suspicions that a diversion of funds had taken place, his "first reaction was to tell Mr. Allen that I didn't want to hear any more about it."[74]

Thus, when witnesses appeared before the Intelligence Committees, they could deflect inquiries because they had consciously chosen to avoid knowledge. This turned upside down the CIA's mission to collect all intelligence relevant to national security.

Such behavior is both self-destructive and corrosive of the democratic process. It is self-destructive because the intelligence agencies are dependent on Congressional support, which is undermined by a lack of candor. It is corrosive of the democratic process because Congress is prevented by such activity from obtaining the information necessary to fulfill its constitutional oversight functions. As Clair George pointed out, once members of the intelligence agencies begin to deceive others in the Government, "the destruction of a secret service in a democracy" must follow. He added, "I deeply believe with the complexities of the oversight process in the relationship between a free legislative body and a secret spy service, that frankness is the best and only way to make it work."[75]

Misuse of Intelligence

The democratic processes also are subverted when intelligence is manipulated to affect decisions by elected officials and the public. This danger is magnified when a Director of Central Intelligence, like Casey, becomes a single-minded advocate of policy. Although Deputy Director of Central Intelligence, John McMahon testified that no such intelligence manipulation took place, there is evidence that Director Casey misrepresented or selectively used available intelligence to support the policy he was promoting, particularly in Central America.

For example, in the first week in January 1986, an all-source CIA analysis stated that while problems with supplies were hampering the Contras' strategy of forcing the Sandinistas to fight on more than one front, "[t]he insurgents have adequate weapons and ammunition and . . . problems with food supplies appear to have eased since U.S. funding [is] available to buy and transport food locally."[76] But that positive evaluation of the Contras' position was not raised during a January 9, 1986, "NSC Pre-Brief."[77] In addition, notes taken during that meeting reflect that Director Casey chose to ignore the CIA assessment and said, he "wants to make the insurgency choice stark—either we go all out to support them or they'll go down the drain."[78]

Intelligence misrepresentations for policy purposes occurred in the spring of 1986, when the Sandinistas pursued Contra fighters into Honduras. Such raids had periodically occurred since mid-1985. Neither Honduras nor the United States made an issue of these incursions because they were limited in scope and aimed at the Contras. At that time, the Sandinista raid was considered routine by the CIA Intelligence Directorate which noted, "[t]he Sandinistas probably believed that there would, as usual, be no Honduran reaction to the incursions and that their forces could quickly move out and return to Nicaragua."[79]

The White House response ignored this assessment, blamed Congress for encouraging the raid, and used the incident to authorize emergency military aid to Honduras. Press spokesman Larry Speakes stated at the daily White House briefing on March 25, 1986:

> Within 48 hours of the House rejection of aid to the Nicaraguan resistance, Sandinista military units crossed into Honduras in a large scale effort to attack UNO and FDN camps.[80]

Actually, the first Sandinistas crossed the border on March 20, the same day as the House action, and began to retreat across the border by March 24, before Speakes gave his briefing.[81] They were back in Nicaragua before President Reagan signed the authorization for emergency military assistance to Honduras.

Casey, however, wanted CIA analysts to highlight, rather than minimize, the raid's significance in Agency reports. In an April 3 memorandum, Casey instructed the Deputy Director of Intelligence to use the available material on the Sandinista incursion:

> to alert the world that the Sandinistas were preparing and trying to knock the Contras out while we debated in the U.S. and can have another bigger try if we debate another two weeks.[82]

The Acting Deputy Director of Intelligence replied on the same date:

> Pursuant to your note this a.m., DI and DO redrafted the blind memo on the Sandinista Military Actions and Intentions. . . . DIA [Defense Intelligence Agency] wanted to prepare a dissent. DIA has not yet formally submitted its position, but we have been led to understand that its approach will be that the incident represented more a target of opportunity for the Sandinistas rather than being representative of any clear strategy. Also, you should know that in the past we have had some difficulty in coordinating pieces on the fighting with INR (of State Department) which has estimated lower numbers of troops involved in recent operations.[83]

Casey subsequently expressed his dissatisfaction with the revised CIA assessment in a memorandum to the C/CATF on April 3:

> [the DDI material] still does not make the point that this is what is trying to be represented as a target of opportunity and the incursion appears to us to be a long-planned effort designed to knock out the Contra forces quickly. . . .[84]

Casey then suggested that alternatively his point be incorporated into a memorandum which should be used for the following purposes:

a. In Latin American countries "[i]t should be taken to the highest level of government available in the hope that it would either influence those governments to be supportive of the Contra program and upcoming debate or at least refrain from undercutting its cause up here."[85]

b. "A fully sanitized version should be made available to Ollie North, Pat Buchanan and Elliott Abrams for their purposes here. I'll leave it up to you to get the materials on to Elliott, Pat and Ollie."[86]

Subsequent developments in Honduras confirmed that the Honduras "emergency" was mainly in Washington. On Tuesday, March 25, when President Reagan ordered the emergency military aid, the U.S. Commander in Chief, South, General John Galvin, arrived in Tegucigalpa to assess the situation and provide intelligence and advice to the Honduran government, President Azcona of Honduras left the capital for a seaside vacation.[87]

Another example of the selective misuse of intelligence occurred in November 1986, after Casey had meetings in several Central American capitals. The local CIA station chiefs attended those meetings and cabled reports of the meetings to the C/CATF, who was to use these cables as the basis for a draft report on the Director's trip.

One of the Central American Presidents was critical of U.S. policies, particularly those supporting the Nicaraguan armed Resistance. The U.S. Ambassador in that country told Casey that most Latin American countries opposed U.S. policy in Central America. Yet, the remarks critical of U.S. policy were omitted from the draft trip report prepared for Casey by the C/CATF.[88]

On November 23, Director Casey discussed his trip to Central America in a letter to President Reagan: "On Thursday, I returned . . . from . . . Central America. I found the commandantes and the fighting men of the FDN in high spirit and ready to go. In stark contrast, the leaders [of Central American countries] were scared to death that we would not stay the course . . . ."[89] In fact, one of the leaders refused to meet with Casey, and another was critical of U.S. policies. Casey chose to give the President a distorted picture of the attitudes of the Central American presidents effectively reinforcing his own view of what U.S. policy should be.

Misrepresentation of intelligence also occurred in the Iran initiative. In memorandums recommending the January Findings, Poindexter told the President that Iran was in danger of losing the war with Iraq. According to Poindexter, Casey, agreed with this assessment. Yet, the Secretary of State, the Secretary of Defense, and Clair George all testified that the intelligence community was of the opposite view—that Iran had the upper hand in the war.

Secretary Shultz asserted that in connection with the Iran initiative, the intelligence "he [the President] was getting . . . was faulty about terrorism."[90] The reason, according to Shultz, was that there was a problem of keeping "intelligence separated from policy and control over policy was very much in play and the Director of Central Intelligence wanted to keep himself very heavily involved in this policy which he had been involved in apparently all along."[91]

The misuse of intelligence was a subject ancillary to the mandate given the Committees by Congress. The Committees included these examples because the serious implications they pose for decisionmaking. This misuse of intelligence by a Director of Central Intelligence, the National Security Advisor, or any Senior Intelligence official, frustrates the ability of those within the executive branch and Congress to arrive at decisions based upon sound national policy judgements.

Conclusions

Out of necessity, covert activities are conducted, and nearly all are approved and monitored, in secret. Because they are not subject to public debate and scrutiny, they must be examined carefully within the practical constraints imposed by the need for operational security. It has been the United States' historic achievement to develop a system of law, using statutes, executive orders, regulations, notification procedures, that provides this scrutiny and protection. The Committees conclude:

(a) Covert operations are a necessary component of our Nation's foreign policy. They can supplement, not replace, diplomacy and normal instruments of foreign policy. As National Security Adviser Robert McFarlane testified, "it is clearly unwise to rely on covert action as the core of our policy."[92] The government must be able to gain and sustain popular support for its foreign policy through open, public debate.

(b) Covert operations are compatible with democratic government if they are conducted in an accountable manner and in accordance with law. Laws mandate reporting and prior notice to Congress. Covert action Findings are not a license to violate the statutes of the United States.

(c) As the Church Committee wrote more than a dozen years ago. "covert actions should be consistent with publicly defined United States foreign policy goals."[93] But the policies themselves cannot be secret.

(d) All Government operations, including covert action operations, must be funded from appropriated monies or from funds known to the appropriate committees of the Congress and subject to Congressional control. This principle is at the heart of our constitutional system of checks and balances.

(e) The intelligence agencies must deal in a spirit of good faith with the Congress. Both new and ongoing covert action operations must be fully reported, not cloaked by broad Findings. Answers that are technically true, but misleading, are unacceptable.

(f) Congress must have the will to exercise oversight over covert operations. The intelligence committees are the surrogates for the public on covert action operations. They must monitor the intelligence agencies with that responsibility in mind.

(g) The Congress also has a responsibility to ensure that sensitive information from the executive branch remains secure when it is shared with the Congress. A need exists for greater consensus between the Legislative and executive branches on the sharing and protection of information.

(h) The gathering, analysis, and reporting of intelligence should be done in such a way that there can be no question that the conclusions are driven by the actual facts, rather than by what a policy advocate hopes these facts will be.

It has been observed that a country without enemies has no need of an army or an intelligence agency.[94]

The United States of America, as a great power with worldwide interests, will continue to have to deal with nations that have different hopes, values, and ambitions. These differences will inevitably lead to conflicts. History reflects that the prospects for peaceful settlement are greater if this country has adequate means for its own defense, including effective intelligence and the means to influence developments abroad.

Organized and structured secret intelligence activities are one of the realities of the world we live in, and this is not likely to change. Like the military, intelligence services are fully compatible with democratic government when their actions are conducted in an accountable manner and in accordance with law.

This country has been fortunate to have a military that is sensitive to the constraints built into the Constitution and to the necessity of respecting the Congress' responsibilities. This attitude of the military has won the trust of the American people, as George C. Marshall, the Chief of Staff of the Army during World War II, explained to one of his officers:

> But we have a great asset and that is that our people, our countrymen, do not distrust us and do not fear us. Our countrymen, our fellow citizens, are not afraid of us. They don't harbor any ideas that we intend to alter the government of the country or the nature of this government in any way. This is a sacred trust. . . .

Like the military, the intelligence services can function only with the trust and support of their countrymen. If they are to earn that trust, they must heed Marshall's words.[95]

Chapter 24

1. For a discussion of tnese issues, see G.F. Treverton, *Covert Action: The Limits of Intervention in the Post-war World* (Basic Books 1987).

2. See U.S. Congress, Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Final Report and Hearings, Book IV: Supplementary Detailed Staff Reports on Intelligence and Military Intelligence (GPO 1975-76).

3. The distinction between clandestine intelligence collection and counterespionage, on the one hand, and covert military, political, and economic actions, on the other, is addressed in R.S. Cline, *The CIA Under Reagan, Bush and Casey* (Acropolis Books, 1981); S. Kent, *Strategic Intelligence for American World Policy* (Princeton University Press, 1966); and L.B. Kirkpatrick, *The United States Intelligence Community: Foreign Policy and Domestic Activities* (Hill & Wan, 1973).

4. Section 3.4(h), Executive Order 12333, December 4, 1981. Sciaroni Ex. 14, at B116.

5. *Id.*

6. See C. Meyer, *Facing Reality: From World Federalism to the CIA,* (Harper and Row, 1980) for a discussion of U.S. covert action in Europe to counter the Soviet political and propaganda offensive during the postwar years.

7. Quoted in W. M. Leary, ed., *The Central Intelligence Agency: History and Documents 131-33* (University of Alabama Press, 1984).

8. *Id.*

9. The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (commonly known as the Church Committee) stated in its 1975 report to the Senate: "Non-attribution to the United States for covert operations was the original and principal purpose of so called doctrine of plausible denial." Evidence before the Committee clearly demonstrates that this concept, designed to protect the United States and its operatives from the consequences of disclosures, has been expanded to mask decisions of the President and his senior staff members. A further consequence of the expansion of this doctrine is that subordinates, in an effort to permit their superiors to 'plausibly deny' operations, fail to fully inform them about those operations. 'Plausible denial' has shaped the process for approving and evaluating covert actions. For example, the 40 Committee and its predecessor, the Special Group, have served as 'circuit breakers' for Presidents, thus avoiding consideration of covert actions by the Oval Office. 'Plausible denial' can also lead to the use of euphemism and circumlocution, which are designed to allow the President and other senior officials to deny knowledge of an operation should it be disclosed." U. S. Congress. Senate. Alleged Assassination Plots Involving Foreign Leaders, an Interim Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Report No. 94-465, 94th Congress, 1st Session (1975), at 11.

10. See Youngstown Sheet & Tube v. Sawyer, 343 U.S. 579, 637 (1952), Jackson, J., concurring. "When the President acts in absence of either a Congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, in which its distribution is uncertain."

11. E.g., Article 18 of the Organization of American States (OAS) Charter, which provides in part that: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed forces but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements."

12. 50 U.S.C. Sec. 401 et seq.

13. H. Moses, *The Clandestine Service of the Central Intelligence Agency, 3-4* (Association of Former Intelligence Officers, 1983).

14. Interview with Lawrence Houston, 7/8/83, quoted in J. Ranelagh, *The Agency: The Rise and Decline of the CIA,* n.7 at 767 (Simon & Schuster 1986).

15. Ranelagh, at 279-83.

16. W. E. Colby, *Honorable Men: My Life in the CIA* (Simon & Schuster 1978).

17. Covert Action in Chile, 1963-1973, Committee Print, Staff Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Operations. U.S. Senate. 94th Congress, 1st Session, 1975.

18. 22 U.S.C. Sec. 2422.

19. This resulted in the Report to the President by the Commission on CIA Activities Within the United States (commonly known as The Rockefeller Commission) (GPO 1975).

20. D. Wise, *The American Police State* (Random House 1976).

21. Hearings and Final Report of the Select Committee to Study Government Operations With Respect to Intelligence Activities, United States Senate, 94th Congress, Vol. 1-7, and Final Report, Books 1-5 (Church Committee).

22. House Select Committee on Intelligence, Recommendations of the Final Report of the House Committee on Intelligence (GPO 1976) (Pike Committee Report).

23. U. S. Congress. Senate. Alleged Assassination Plots Involving Foreign Leaders, an Interim Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Report No. 94-465, 94th Congress, 1st session (1985), at 16, 25-26, 65, 67, 117.

24. 22 U.S.C. Sec. 2422.

25. The Church Committee stated: "The concept of plausible denial, at least as it applies to the President, within the government 'is dead.' Main new covert operations cannot be undertaken without the knowledge, and approval, of the Chief Executive." Church Committee Final Report, Book I, at 58.

26. Formerly Pub. L. 93-559, Sec. 32, 88 Stat. 1804 (1974).

27. 41 Fed. Reg. 7703 (1976).

28. 43 Fed. Reg. 3674 (1978).

29. 22 U.S.C. Sec. 2422.

30. Senate Report No. 96-730, May 15, 1980, to accompany S. 2284, at 4.

31. *Id.* at 2.

32. *Id.* at 12.

33. *Id.* at 5.

34. Presidential Statement on U.S. Intelligence Activities, 12/4/81, Public Papers of Ronald Reagan, 1981, at 1126-27.

35. Executive Order 12333, 12/4/81, Sciaroni Ex. 14, at B102 16.

36. Section 3.l, Executive Order 12333, December 4, 1981, at B114.

37. U.S. Congress. House Permanent Select Committee on Intelligence, Hearings before the Subcommittee on Legislation, H.R. 1013, H.R. 1371, and Other Proposals Which Address the Issue of Affording Prior Notice of Covert Actions to the Congress, 100th Cong., 1st Sess., at 176 (June 10, 1987).

38. Chronology of House Permanent Select Committee on Intelligence and Mining Activities, Internal Memorandum. See Chapter 2.

39. C0616-C0621.

40. *Id.*

41. The Finding states: "Support and conduct . . . paramilitary operations against the Cuban presence and Cuban Sandinista support infrastructure in Nicaragua and elsewhere in Central America." N44649.

42. Gregg Memo, 7/12/82, to W. Clark: Subj: "Proposed Covert Action Finding on Nicaragua." N44654.

43. Inman Int., 3/16/87, at 6.

44. Sporkin Int., 3/19/87, at 2.

45. *Id.*

46. See Chapter 22.

47. See New York Times, 5/16/87, at A1. The President stated, "As a matter of fact, I was very definitely involved in the decisions about support to the freedom fighters. It was my idea to begin with."

48. Tower Report, at III-24.

49. McFarlane Test., 7/14/87, at 201, 221-22; 5/11/87, at 7 25.

50. North Test., 7/7/87, at 24; *id.* 7/8/87, at 226; *id.* 7/13/87, at 128-30; Poindexter Test., 7/15/87, at 187-88.

51. McFarlane PROF Note, 11/22/86 at 16:56:33, to Poindexter, Ex. EM-41.

52. Prof Note, McFarlane to Poindexter, 11/21/86, N12670.

53. Meese Test., 7/29/87, at 231.

54. Ex. JMP-18; Poindexter Test., 7/15/87, at 43; McMahon Dep., 6/1/87, at 94-97.

55. 22 U.S.C. Sec. 2751 et seq.

56. Poindexter Test., 7/15/87, at 94.

57. *Id.* at 44.

58. Letter from William French Smith, Attorney General of the United States, to William J. Casey, Director of Central Intelligence, 10/5/81, with attachments. N10019-40.

59. *Id.*

60. Ex. JMP-28.

61. *Id.*

62. Pub. L. 99-399, Sec. 509(a) (Aug. 27, 1986).

63. Sporkin Test., 6/24/87, at 183 (emphasis added). Judge Sporkin had left the CIA before the 1986 amendment was completed.

64. Section 2.8, Executive Order 12333, December 4, 1981.

65. Hearings before HPSCI, 10/14/86.

66. George Test., 8/6/87, at 34.

67. Hearings Before the Senate Foreign Relations Committee, 10/10/86, at 16.

68. C/CATF Test., 8/5/87, at 58.

69. *Id.*, at 62.

70. *Id.*, at 171-75.

71. *Id.*, at 185; George Dep., 8/6/87, at 80.

72. N7015.

73. Gates, Tower Test., 12/4/86, at 38.

74. *Id.*, at 18-19.

75. George Test., 8/6/87, at 175.

76. CIA Special Analysis "Resupply Problems for Insurgents," at 9 (Jan. 8, 1986), CIIN 1391, TCS 2706/86, C3327.

77. C3315-17.

78. C3315.

79. C4929.

80. Transcript of 3/25/86 Press Briefing. N38896.

81. "U.S. Pushed Honduras to Admit Raid," Miami Herald, 3/28/86, at 1A, 16A.

82. C4921.

83. *Id.*

84. C4920.

85. *Id.*

86. *Id.*

87. Associated Press wire article, by George Gedda, 3/25/86, 10:14 AET.

88. C/CATF Test., 5/5/87, at 233-35.

89. C1698.

90. Shultz Test., 7/23/87, at 162.

91. *Id.*, at 12.

92. McFarlane Test., 5/1/87, at 8.

93. Church Committee, Findings and Conclusions at 448.

94. T. Powers, *The Man Who Kept the Secrets: Richard Helms and the CIA*, at vi (Knopf 1979).

95. F.C. Pogue, 3 George Marshall 459 (Viking Press 1973).

Chapter 25

Powers of Congress and the President in the Field of Foreign Policy

Under our Constitution, both the Congress and the Executive are given specific foreign policy powers. The Constitution does not name one or the other branch as the exclusive actor in foreign policy. Each plays a role in our system of checks and balances to ensure that our foreign policy is effective, sustainable and in accord with our national interests.

Key participants in the Iran-Contra Affair had serious misconceptions about the roles of Congress and the President in the making of foreign policy. Poindexter testified, referring to his efforts to keep information about the covert action in support of the Contras from the Congress, "I simply did not want any outside interference." [1] North testified, "I didn't want to show Congress a single word on this" same covert action.[2] In Poindexter's and North's view, Congress trespassed on the prerogatives and policies of the President and was to be ignored or circumvented when necessary. If Congress denied the President funds to implement his foreign policy, they believed that the President could and should seek funds from private parties and foreign governments. If Congress sought to investigate activities which were secretly taking place, they believed executive branch officials could withhold information to conceal operations. These practices were required, in their judgment, to promote the President's policies.

In Part IV, these Committees set forth the record of the misrepresentations, half-truths, and concealment employed by some within the executive branch to prevent Congress from learning about the NSC staff's covert activities. Here, we note that the attitude that motivated this conduct was based on a view of Congress' role in foreign policy that is without historical or legal foundation.

The argument that Congress has but a minor role in foreign policymaking is contradicted by the language of the Constitution, and by over 200 years of history. It is also shortsighted and ultimately self-defeating. American foreign policy and our system of government cannot succeed unless the President and Congress work together.

The Witnesses' Position at the Hearings

During the public hearings, both Poindexter and North characterized Congress as meddlers in the President's arena. Both asserted that their actions in providing covert support to the Contras were lawful despite the prohibitions contained in the Boland Amendment.[3] In light of that position, Poindexter was specifically asked "why it was when the NSC was carrying out military support for the Contras, you felt it necessary to withold information from the Congress." [4] In his responses, Poindexter said in part that the covert action in Central America was an implementation of the President's policy, and that "we didn't want more restrictive legislation introduced in some new form of the Boland Amendment." [5] Characterizing such legislation as "outside interference," Poindexter responded to questions:

> Q. Now, the outside interference we are talking about was Congress, and I take it the reason they were inquiring about Colonel North's activities, the Government's activities in support of the Contras, was precisely so that they could fulfill with information their constitutional function to pass legislation, one way or the other. Isn't that true?
>
> A. Yes, I suppose that is true.
>
> Q. And that you regarded as outside interference?
>
> A. The point was, and still is, that the President has the constitutional right and, in fact, the constitutional mandate to conduct foreign policy. His policy was to support the Contras.[6]

North also repeatedly stated his view that "it was within the purview of the President of the United States to conduct secret activities . . . to further the policy goals of the United States." [7] North claimed that the President had the power under the Constitution to conduct "secret diplomacy" because "the President can do what he wants with his own staff." [8] He stated that the President had a "very wide mandate to carry out activities, secretly or publicly, as he chooses." [9]

The Constitutional Framework

The Constitution itself gives no support to the argument that the President has a mandate so broad. The words "foreign policy" do not appear in the Constitution, and the Constitution does not designate the President as the sole or dominant actor in foreign policy.

The only foreign policy powers expressly granted to the Executive in the Constitution are the powers to nominate Ambassadors, to negotiate treaties, and to direct the Armed Forces as Commander-in-Chief. Two of these powers are specifically conditioned on Senate approval: the Senate, through its power of advise and consent, can confirm or reject Ambassadors and ratify or reject treaties.

On the other hand, the Constitution expressly grants Congress the power to regulate foreign commerce, to raise and support armies, to provide and maintain a navy, and to declare war. Congress is given the exclusive power of the purse. The Executive may not spend funds on foreign policy projects except pursuant to an appropriation by Congress.

Judicial Decisions Recognize a Shared Power

Judicial decisions have not found in the Constitution any exclusive Presidential power to conduct foreign affairs. Questions involving foreign policy are infrequently litigated. But on those occasions where opinions are on point, the courts routinely have described the conduct of foreign policy as a shared power between Congress and the President.

Only last year, the Supreme Court, in discussing its own role in a case involving "this Nation's foreign relations," recognized "the premier role which both Congress and the Executive play in this field." [10] Similarly, in 1948 the Supreme Court declined to take jurisdiction of a case turning on a foreign policy issue, noting that such issues "are wholly confided by our Constitution to the political departments of the government, Executive and Legislative." [11] In a 1979 case, the D.C. Circuit Court of Appeals noted that Congress' role in foreign policy stems from its power of the purse and its authority to investigate the Executive's faithful execution of the law: "The legislature's powers, including prominently its dominant status in the provision of funds, and its authority to investigate the Executive's functioning, establish authority for appropriate legislative participation in foreign affairs." [12]

In 1977, the D.C. Circuit rejected the argument that the Executive had "absolute discretion in the area of national security." [13] The Court noted that the Constitution assigns each branch powers "equally inseparable from the national security." [14] Finally, the Court dismissed the executive branch's claim that it could prevent Congress from obtaining information that might impact on national security since the Executive's concern with secrecy "conflicts with an equally legitimate assertion of authority by Congress to conduct investigations relevant to its legislative functions." [15]

Congress's role in obtaining and protecting confidential information relating to foreign policy has also been recognized in judicial opinions. In *United States* v. *Nixon*, the Supreme Court recognized that "military, diplomatic, or sensitive national security secrets" [16] may be entitled to specially privileged status in certain contexts, but went on specifically to state that the case had nothing to do with the balance between the President's "generalized interest in confidentiality . . . and congressional demands for information." [17] And, as Justice Black noted in his concurrence in the 1971 Pentagon Papers case, "[t]he guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic." [18]

The D.C. Circuit has also underscored that the duty of protecting national security secrets is shared jointly by Congress and the President: "There is Constitutional power, under the Necessary and Proper Clause, in the federal government to keep national security information secret. This is typically a government power, to be exercised by the legislative and executive branches acting together." [19]

Judicial opinions, thus, have consistently recognized that Congress shares with the President powers in the conduct of foreign policy and also shares with him the right of access to, and the duty to protect, sensitive national security information.

The *Curtiss-Wright* Case

In urging a broad interpretation of presidential power, various witnesses before these Committees invoked the Supreme Court's 1936 decision in *United States* v. *Curtiss-Wright Export Corporation*.[20] Their reliance on this case is misplaced.

In *Curtiss-Wright*, Congress, by statute, had delegated to the President the power to prohibit the sale of arms to countries in an area of South America if the President believed the prohibition would promote peace. The Curtiss-Wright Corporation claimed that the power to make this determination was a legislative power that Congress could not delegate to the President.

Witnesses at the hearings misread this case to justify their claim that the President had broad inherent foreign policy powers to the virtual exclusion of Congress. *Curtiss-Wright* did not present any such issue. The case involved the question of the powers of the President in foreign policy where Congress expressly authorizes him to act; it did not involve the question of the President's foreign policy powers when Congress expressly forbids him to act.

In *Curtiss-Wright*, the Court upheld broad delegations by Congress of power to the President in matters of foreign affairs. Writing for the Court, Justice Sutherland said that legislation within "the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." [21]

In language frequently seized on by those seeking to claim that the President's role in foreign policy is exclusive, Justice Sutherland noted that the President was acting not only with a delegation of power by the legislature, but also with certain powers the Constitution gave directly to him:

> It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to applicable provisions of the Constitution.[22]

Some have tried to interpret this passage as stating that the President may act in foreign affairs against the will of Congress. But that is not what it says. As Justice Jackson later observed, the most that can be drawn from Justice Sutherland's language is the intimation "that the President might act in external affairs without congressional authority, but not that he might act contrary to an Act of Congress." [23] More recently, in *Dames & Moore* v. *Regan*,[24] the Supreme Court cautioned that the broad language in *Curtiss-Wright* must be viewed only in context of that case. Writing for the majority, Justice (now Chief Justice) Rehnquist expressed the Court's view of the appropriate relationship between the executive and the legislative branches in the conduct of foreign policy:

> When the President acts pursuant to an express or implied authorization from Congress, he exercises not only his powers but also those delegated by Congress. In such a case the executive action 'would be supported by the strongest presumptions and widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.' . . . When the President acts in the absence of congressional authorization he may enter a 'zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.' . . . In such a case, the analysis becomes more complicated, and the validity of the President's action, at least so far as separation-of-powers principles are concerned, hinges on a consideration of all the circumstances which might shed light on the views of the Legislative Branch toward such action, including 'congressional inertia, indifference or quiescence.' . . . Finally, when the President acts in contravention of the will of Congress, 'his power is at its lowest ebb' and the Court can sustain his actions "only by disabling the Congress from action on the subject." [25]

Similarly, in 1981, the D.C. Circuit cautioned against undue reliance on the quoted passage from *Curtiss-Wright*: "To the extent that denominating the President as the 'sole organ' of the United States in international affairs constitutes a blanket endorsement of plenary Presidential power over any matter extending beyond the borders of this country, we reject that characterization." [26]

In calling the President the "sole organ" of the Nation in its relations with other countries, Justice Sutherland quoted from a speech by John Marshall in 1800 when Marshall was a Member of the House of Representatives: "As Marshall said in his great argument of March 7, 1800, in the House of Representatives, 'The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.' Annals, 6th Cong., col. 613." [27]

The reader might assume from this passage that Marshall advocated an exclusive, independent power for the President in the area of foreign affairs, free from legislative control. When his statement is placed in the context of the "great argument of March 7, 1800," however, it is clear that Marshall regarded the President as simply carrying out the law as established by statute or treaty. The House had been debating a decision by President John Adams to turn over to England a person charged with murder. Some members thought the President should be impeached for encroaching upon the judiciary, since the case was already pending in court. Marshall replied that President Adams was executing a treaty approved by the Senate that had the force of law. Here is the full context of Marshall's "sole organ" statement:

> The case was in its nature a national demand made upon the nation. The parties were the two nations. They cannot come into court to litigate their claims, nor can a court decide on them. Of consequence, the demand is not a case for judicial cognizance.
>
> The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him.

> He possesses the whole Executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him.
>
> He is charged to execute the laws. A treaty is declared to be law. He must then execute a treaty, where he, and he alone, possesses the means of executing it.
>
> The treaty, which is a law, enjoins the performance of a particular object. The person who is to perform this object is marked out by the Constitution, since the person is named who conducts the foreign intercourse, and is to take care that the laws be faithfully executed. The means by which it is to be performed, the force of the nation, are in the hands of this person. Ought not this person to perform the object, although the particular mode of using the means has not been prescribed? Congress, unquestionably, may prescribe the mode, and Congress may devolve on others the whole execution of the contract; but, till this be done, it seems the duty of the Executive department to execute the contract by any means it possesses.[28]

Moreover, as Professor Corwin—a respected scholar on the American Presidency—has written, although Marshall referred to the President as the "sole organ of the nation in its external relations," "[c]learly, what Marshall had foremost in mind was simply the President's role as instrument of communication with other governments." [29]

While the President is not confined to acting merely as an "instrument of communication with other governments," neither does the President enjoy absolute or exclusive power in matters affecting foreign affairs. The *Curtiss-Wright* opinion itself notes that the President's authority in foreign affairs "must be exercised in subordination to the applicable provisions of the Constitution." [30]

At the hearings, North cited to the circumstances surrounding Senate consideration of the Jay Treaty during the presidency of George Washington as support for his claim that the President had the power to withhold information from Congress. There, President Washington "refused to accede to a request to lay before the House of Representatives the instructions, correspondence and documents relating to the negotiation of the Jay Treaty." [31]

Reliance on President Washington's position with respect to information about the Jay Treaty is erroneous. President Washington did not argue that he had the power to withhold documents from Congress. As the opinion in *Curtiss-Wright* makes clear, President Washington only withheld these "correspondence and documents" from one House of Congress, not from the entire legislative branch. He gave the documents to the Senate; he withheld them from the House because the documents related to a treaty negotiation, and the power to ratify or reject treaties is reserved under the Constitution to the Senate.

Circumvention of Congress' Constitutional Power of the Purse

In testifying before these Committees, North and Poindexter indicated their view that whatever power Congress may have in foreign policy derived solely from its power of the purse. They reasoned that so long as public money was not expended, Congress had no role and the President was free to pursue his foreign policy goals using private and third-country funds.

North said the President "was fully within his rights to send us off to talk to foreign heads of state, to seek the assistance of those foreign heads of state to use other than U.S. Government monies, and to do so without a Finding." [32] Poindexter supported the concept of circumventing Congressional opposition to the President's foreign policy by using nonappropriated funds:

> Congress has put some restrictions on the use of proposed funds. Those restrictions didn't apply to private funds. They didn't apply to third-country funds.
>
> And the restrictions in the Boland Amendment, as I have said, did not apply to the NSC staff.[33]

These claims by North and Poindexter strike at the very heart of the system of checks and balances. To permit the President and his aides to carry out covert actions by using funds obtained from outside Congress undermines the Framer's belief that "the purse and the sword must never be in the same hands."

These Committees have rejected these claims in Chapter 27. Suffice it to say here that, under the view of North and Poindexter, a President whose appropriation requests were rejected by Congress could raise money from private sources or third countries for armies, military actions, arms systems, and even domestic programs. That is the path to dictatorship.

Besides usurping Congress' power of the purse, the use of foreign funds has another, equally dangerous, effect on our democratic processes. That effect was explored by a Member of the panel during McFarlane's testimony about the solicitation of Country 3 for assistance to the Contras:

> Q: In October 1985 when the State Department was scheduling an appointment for Colonel North to meet with one of these countries that later contributed $2 million, I was involved in a tough legislative battle in this House. On October 12, I believe, of 1985, this House passed a textile

> bill, very controversial. At that very time, Colonel North apparently was soliciting, from a nation that was impacted by this bill, funds secretly and that country later delivered $2 million, according to the testimony.
>
> The President vetoed that bill in December 1985 and between December 1985 and August 1986, when the Congress decided to sustain the President by an eight-vote margin, there were entreaties apparently made to many other nations that were impacted by this legislation. . . .
>
> * * * * *
>
> So this is the type of thing that is extremely dangerous from a perception standpoint, is it not?
>
> A: I agree with that, yes.
>
> Q: I think I could go back into my District or around this country and say while I was fighting for this bill, unbeknownst to me one of the nations that was severely impacted was secretly giving millions of dollars to the executive branch that later vetoed the bill, that ought to be disturbing to me, don't you think?
>
> A: I agree sir.[34]

It is a mistake for the United States to engage in what Assistant Secretary of State Elliott Abrams called "tin cup" diplomacy. It is unseemly for a global superpower to ask other nations to finance its foreign policy. Moreover, allowing foreign policy to be conducted with funds supplied by private parties and foreign governments is likely to create the expectation by the donor nations that they can expect something in return for their largesse. These concerns were, of course, raised by Congressional actions when in August 1985 it allowed the Administration to solicit humanitarian assistance for the the Contras from third countries. But since this decision was made openly and in accordance with the normal processes of government, the reward for any donor nation could also be openly considered and agreed upon by the executive and legislative branches. There would be no need to hide the help, and no reason to hide the reward.

But by seeking private and third-country aid for the Contras without Congressional notification—much less approval—the Administration did more than engage in an unfortunate fundraising effort that opened the door to expectations of secret return favors. This clandestine financing operation undermined the powers of Congress as a coequal branch and subverted the Constitution.

Foreign Policy as a Shared Power

The sharing of power over foreign policy requires consultation, trust, and coordination. As President Reagan told a joint session of Congress on April 27, 1983: "The Congress shares both the power and the responsibility for our foreign policy."

In the aftermath of the Vietnam war, Secretary of State Henry Kissinger observed:

> The decade-long struggle in this country over executive dominance in foreign affairs is over. The recognition that the Congress is a coequal branch of government is the dominant fact of national politics today. The executive accepts that the Congress must have both the sense and the reality of participation; foreign policy must be a shared enterprise.[35]

The need for such a cooperative relationship was stressed in the testimony received by these Committees from Secretary of State George Shultz and Secretary of Defense Caspar Weinberger. Each recognized that both Congress and the Executive had fundamental duties in the area of foreign policy.

Secretary Shultz rejected the notion that there is a need "to lie and cheat in order to be a public servant or to work in foreign policy." [36] He emphasized that Congress and the President must work cooperatively on foreign affairs:

> [W]e have to respect the fundamental duties of our colleagues on the Hill, but we have to expect them to respect ours and what that means is . . . while we have a system of separation of powers in the way it is constituted, it inevitably means we also have a system of sharing powers . . . .
>
> You have to have a sense of tolerance and respect and a capacity to work together and a desire to do it, for us to share information, for you to put forward your ideas, not to keep telling us all the time how to run things. But keep tabs. To have a way of interacting . . . .[37]

Secretary Weinberger was asked at the hearings whether frequent consultation with Congress on foreign policy issues was a valuable opportunity for the President. He replied:

> Indeed, yes, sir. Not only because it is very useful to have the advice . . . but I also think that it is important for the longer-range success of any kind of activity, because I have frequently made the point in private meetings that we can't fight a war on two fronts.
>
> We can't fight with the enemy, whoever it may be, and we can't fight with the Congress at the same time.

> We need to have the United States Government unified if any kind of activity is going to succeed over the long run and we have a very different governmental system than most other countries.
>
> We deliberately divided authority and power to keep government ineffective and weak, that is what the Founders had in mind. They considered it to a considerable extent, but we can work within that. But we do have to do it in a way that gets as much general acceptance of a course before we embark on it whenever we possibly can as soon thereafter as we can.[38]

Questioned further whether clandestine undertakings needed the support of the Congress, he replied:

> I think without any question, sir, because you frequently with clandestine activities, which we have to do in this kind of world, you are not able to have public support.
>
> So you certainly need to have Congressional understanding, Congressional approval wherever it can be obtained, and that is done through consultation . . . .[39]

In remarks to Poindexter near the end of Poindexter's testimony before these Committees, a Republican Member of the House Select Committee highlighted the need for honest consultation where the Constitution divides power among branches of government: "The reason for not misleading the Congress is a practical one. It is stupid. It is self-defeating because while it may, in fact, allow you to prevail in the problem of the moment, eventually you destroy the President's credibility."[40]

Conclusion

The questions before these Committees concerning the foreign policy roles of Congress and the President are not abstract issues for legal scholars. They are practical considerations essential to the making of good foreign policy and the effective functioning of government. The theory of the Constitution is that policies formed through consultation and the democratic process are better, and wiser, than those formed without it.

The Constitution divided foreign policy powers between the legislative and executive branches of government. That division of power is fundamental to this system, and acts as a check on the actions of each branch of government. Those who would take shortcuts in the constitutional process—mislead the Congress or withhold information—show their contempt for what the Framers created. Shortcuts that bypass the checks and balances of the system, and excessive secrecy by those who serve the President, do not strengthen the President. They weaken the President and the constitutional system of government.

Chapter 25

1. Poindexter Test., *Hearings*, 100-8 at 158.
2. North Test., *Hearings*, 100-7, Part I at 87.
3. Poindexter Test., *Hearings*, 100-8 at 155, 158.
4. Poindexter Test., *Hearings*, 100-8 at 158.
5. *Id.*
6. *Id.* at 159.
7. North Test., *Hearings*, 100-7, Part II at 38.
8. *Id.* at 37.
9. *Id.* at 34.
10. Japan Whaling Assn. v. American Cetacean Society, 106 S.Ct. 2860, 2866 (1986).
11. C. & S. Air Lines v. Waterman Corp., 333 U.S. 103, 111 (1948).
12. Goldwater v. Carter, 617 F.2d 697, 709 (D.C. Cir. 1979), vacated on other grounds, 444 U.S. 996 (1980).
13. United States v. AT&T, 567 F.2d 121, 128 (D.C. Cir. 1977).
14. *Id.* at 128.
15. *Id.*
16. United States v. Nixon, 418 U.S. 683, 706 (1974).
17. *Id.* at 712 n. 19. (Emphasis added.)
18. New York Times Co. v. United States, 403 U.S. 713, 719 (1971).
19. United States v. AT&T, 551 F.2d 384, 393 (D.C. Cir.1976) (footnote omitted).
20. United States v. Curtiss-Wright Corp., 299 U.S. 304(1936).
21. *Id.* at 320.
22. *Id.* at 319-320.
23. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 636 n.2 (1952) (Jackson, J., concurring).
24. 453 U.S. 654 (1981).
25. *Id.* at 668-69 (emphasis added; quoting in part Jackson, J., concurring, in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. at 637-38.
26. American Intern. Group v. Islamic Republic of Iran, 657 F.2d 430, 438 n.6 (D.C. Cir. 1981).
27. United States v. Curtiss-Wright, 299 U.S. at 319.
28. Annals of Cong., 6th Cong., at 613-614 (emphasis supplied).
29. E. Corwin, The President: Office and Powers 1787-1957 178 (1957) (emphasis in original).
30. 299 U.S. at 320.
31. *Id.* at 320.
32. North Test., *Hearings*, 100-7, Part II at 37.
33. Poindexter Test., *Hearings*, 100-8 at 158.
34. McFarlane Test., *Hearings*, 100-2 at 279-80.
35. 72 Dept. State Bull. 562 (1975).
36. Shultz Test., *Hearings*, 100-9 at 232.
37. Shultz Test., *Hearings*, 100-9 at 236-237.
38. Weinberger Test., *Hearings*, 100-10 at 208-209.
39. *Id.* at 209.
40. Poindexter Test, *Hearings*, 100-8, at 246.

Chapter 26

The Boland Amendments and The NSC Staff

Beginning in 1983, Congress responded to the President's policy toward the Contras principally through its power over appropriations—one of the crucial checks on Executive power in the Nation's system of checks and balances. Because the President's program depended upon providing financial assistance to the Contras, appropriations bills became the forum for debating what the Nation's policy should be.

Aid to the Contras was controversial from the beginning. The Kissinger Commission,[1] unanimous on virtually all other recommendations about Central America, could not agree on the Contras. The Administration's justifications for aid to the Contras were sometimes contradictory. The President publicly denied that his goal was to overthrow the Sandinista Government. Yet the Contras pursued only one goal—to topple the Sandinistas.

In Congress, the two Chambers found themselves at odds, with the House generally denying or restricting and the Senate generally supporting aid for the Contras. Votes in each Chamber were often decided by razor-thin margins.

Ultimately, restrictions on assistance to the Contras were embodied in the Boland Amendments, named after their chief sponsor, Representative Edward P. Boland. While Congress applied various requirements to support for the Contras in each of the six fiscal years from October 1, 1982, to September 30, 1987, the legislation for fiscal years 1983, 1985, and 1986 embodied the most important restrictions and will be designated Boland, I, II, and III, respectively.

The Boland Amendments were compromises between supporters of the Administration's programs and opponents of Contra aid. As compromises, they were written not with the precision of a tax code, but in the language of trust and with the expectation that they would be carried out in good faith. None expected the Administration to secretly seek loopholes, or to lead Congress to believe that support was not being given to the Contras when, in fact, it was.

This Chapter focuses on how the Boland Amendments evolved[2] and on how one element within the White House—the National Security Council staff—discharged its trust under the Boland Amendments.

Boland I: September 27, 1982, to December 7, 1983

As has been noted in other chapters, the Administration's efforts on behalf of the Nicaraguan resistance began not long after the Administration began. By the end of 1981, as required by law, the Administration was advising the Intelligence Committees in both chambers of Congress about the Central Intelligence Agency's involvement in Nicaragua, which was then funded out of the CIA's contingency reserve.[3] According to the Administration, its covert activities were intended to interdict the flow of arms from Nicaragua to rebel forces opposing the government of El Salvador.[4] Ultimately, both Intelligence Committees sought to curtail, or at least channel, the CIA's activities in the region by restricting the CIA's use of its contingency reserve funding. The first such restriction was embodied in a classified annex to the intelligence authorization bill for fiscal year 1983, which became effective September 27, 1982.[5]

In late 1982, the American press began to report accounts of the Administration's "secret war" in Nicaragua.[6] On December 8, 1982, Representative Tom Harkin offered an amendment to the pending Defense Appropriations Bill for fiscal year 1983 stating:

> None of the funds provided in this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not a part of a country's armed forces, for the purpose of assisting that group or individual in carrying out military activities in or against Nicaragua.[7]

Soon thereafter, Representative Boland, Chairman of the House Permanent Select Committee on Intelligence, sponsored a substitute—referring explicitly to the overthrow of the Government of Nicaragua—that was to become Boland I:

> None of the funds provided in this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equip-

> ment, military training or advice, or other support for military activities, to any group or individual, not a part of a country's armed forces, for the purpose of overthrowing the government of Nicaragua or provoking a military exchange between Nicaragua and Honduras.[8]

Representative Boland said that this substitute was substantively identical to the restriction contained in the classified annex to the earlier enacted Intelligence Authorization Act and that it had been accepted by the Administration. "They do not like it," he said, "but it is agreeable to them." [9]

Representative Harkin countered almost immediately with a substitute of his own, which differed primarily from Representative Boland's by focusing on the intent of the recipients of CIA assistance:

> None of the funds provided in this Act may be used by the Central Intelligence Agency or any agency of the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any individual or group which is not part of a country's armed forces *and which is already known by that agency to have the intent of overthrowing the government of Nicaragua* or of provoking a military conflict between Nicaragua and Honduras.[10]

Representative Harkin's substitute was defeated; Boland I prevailed by a vote of 411 to 0.

In the Senate, a similar debate took place, but with a different outcome. On December 18, 1982, by a vote of 58 to 38, that body tabled a proposal sponsored by Senator Christopher J. Dodd that would have made a "policy declaration" that "no funds should be obligated or expended, directly or indirectly, after January 20, 1983, in support of . . . paramilitary groups operating in Central America." [11]

Ultimately, the conference committee incorporated Boland I into the Defense Appropriations Act for fiscal year 1983, which became effective on December 21, 1982.[12] Boland I was the law at least until October 1, 1983.[13]

Within a few months of the enactment of Boland I, however, a dispute arose between the Administration and some Members of Congress, including Representative Boland, over the scope of the prohibition. Representative Boland and others in Congress contended that the intent of the recipients of the aid governed the permissibility of assistance. No group that intended to overthrow the Nicaraguan Government could receive U.S. assistance, they said.[14]

The Administration took a more constricted view: as long as the United States itself was not seeking to overthrow the Sandinista Government, the objectives of the Contras to replace the Nicaraguan Government were irrelevant.[15] As support for its position, the Administration pointed to the defeat of the second Harkin amendment, which would have barred assistance to the Contras because of their intent to overthrow the Nicaraguan Government. While subsequent changes in the Boland amendments ultimately would render moot this particular dispute, the Administration's willingness, indeed eagerness, to exploit ambiguities in Boland I presaged its attitude toward the later Congressional efforts to limit Administration support for the Contras. In addition, the aggressive approach by the Administration to this ambiguity helps to explain why the Boland Amendments evolved toward more restrictive formulations.

Limited Funding: December 8, 1983, to October 3, 1984

As fiscal year 1983 progressed with Boland I in place, the Administration's support for the Contras continued. In addition, the Administration began to expand its justifications for the program beyond the interdiction of arms to include bringing the Sandinistas to the bargaining table and forcing free elections.[16]

As a result, on May 13, 1983, the House Permanent Select Committee on Intelligence reported out H.R. 2760, a bill to amend the Intelligence Authorization Act for the then-current fiscal year that would have foreclosed funding for the Contras. In language that foreshadowed Boland II, that bill provided:

> None of the funds appropriated for the Central Intelligence Agency or any other department, agency, or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.[17]

The Senate never voted on H.R. 2760.[18] Thus, Boland I continued to govern the Administration's relationship with the Contras through the remainder of fiscal year 1983.[19]

While H.R. 2760 was under consideration, however, both the House and the Senate were working on intelligence authorizations and defense appropriations for fiscal year 1984. As reported out by the House Intelligence Committee, the Intelligence Authorization Bill, H.R. 2968, contained the same provisions cutting off funding for the Contras as did H.R. 2760.[20]

Fiscal year 1984 was well under way before H.R. 2968 reached the floor of the House.[21] Again members extensively debated the proper policy toward Nicaragua, and again voted to cut off covert aid, 243 to 171.[22]

On the Senate side, the intelligence authorization legislation was reported out of committee without any unclassified restriction on support for the Contras. On

November 3, 1983, after debate over the Administration's policies toward Nicaragua, the Senate approved an intelligence authorization bill that did not restrict assistance for the Contras.[23]

The conference on the conflicting versions of the legislation was a pivotal point in the history of aid to the Contras. After the conference, Representative Boland explained the opening positions and the outcome to his colleagues in the House:

> As you know, I believe [the Central Intelligence Agency's] paramilitary action in Nicaragua is illegal, unwise, counterproductive, and against the best interest of the United States.
>
> I, and a majority of the House conferees, would have preferred that the covert action be stopped.
>
> This was the position of the House of Representatives.
>
> Just as clearly, it was the position of the Senate conferees and of the Senate that the action should be permitted to continue and that when appropriated funds ran out, the Central Intelligence Agency could utilize the reserve for contingencies unless both Intelligence Committees disapproved.
>
> We could have forced a deadlock and killed both the Intelligence Authorization Bill and the Defense Appropriations Bill.
>
> But the Central Intelligence Agency would still have been able to fund the covert action from the Continuing Resolution and from the reserve for contingencies—and would have had available to it much more than $24 million. Instead, we agreed to a compromise—a $24 million cap on funding from whatever source.[24]

The key to this compromise from the House's standpoint was the amount of aid provided, enough to carry the Contras "at present rate of expenditure" only through June 1984.[25] At that point, according to Representative Boland, the Administration would have to terminate its covert program or come "back to both Houses of Congress and request additional funds. . . ."[26]

The conference language, included in both the Intelligence Authorization Act (Public Law 98-212) and the Defense Appropriations Act (Public Law 98-215) for fiscal year 1984, read:

> During fiscal year 1984, not more than $24 million of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.[27]

Significantly, these pieces of legislation, which became effective on December 8 and December 9, 1983, included within the $24 million cap all funds expended to assist the Contras from the beginning of the fiscal year on October 1, 1983. Thus, by the time these enactments became law, there was already less than $24 million that could be provided by the covered agencies.

Boland II: October 3, 1984, to December 3, 1985

The period between October 12, 1984 (the effective date of Boland II), and August 8, 1985 (the effective date of the legislation providing for "humanitarian aid"), was the high-water mark of restrictions on assisting the Contras. During this period, the covered agencies and entities were proscribed from expending any funds whatsoever to support, directly or indirectly, those resistance forces.

But Boland II was itself a compromise. As will be seen, even as Congress shut off aid at the beginning of fiscal year 1985, the Senate insisted on providing a procedure that might expedite support for the Contras after February 28, 1985, upon the passage of a joint resolution.[28] An important question would also arise after the Committees began their investigation as to the application of Boland II to the NSC and its staff. As before, an examination of the events leading to this version of the Boland Amendment is essential to its understanding.

The Evolution of Boland II

A major factor in the formulation and passage of Boland II was the revelation regarding the mining of Nicaraguan harbors. On April 6, 1984, The Wall Street Journal reported the CIA's involvement in that mining. Additionally, the CIA's role in military attacks on Nicaraguan oil facilities at the port of Corinto was soon thereafter revealed.[29]

Many Members of Congress expressed astonishment at these revelations. A dispute arose as to whether CIA Director Casey had adequately notified the Intelligence Committees. Senator Goldwater, Chairman of the Senate Committee, protested to Casey.[30] National Security Adviser Robert McFarlane responded that Congress had been adequately briefed about the mining. In support of Senator Goldwater's position, his vice-chairman, Senator Moynihan, resigned from that post, only to be persuaded to stay on.[31] Both the Senate and the House ultimately voted to condemn the CIA's involvement in the incident.[32] The revelations also produced an intense negative international reaction, particularly when Nicaragua sued the United

States in the International Court of Justice alleging, and ultimately proving to the satisfaction of that court, that the United States violated international law.[33]

As the end of fiscal year 1984 approached, the House considered an Intelligence Authorization Bill (H.R. 5399), and a Continuing Appropriations Bill (H.J. Res. 648), both of which prohibited the use of any funds available to the CIA, DOD, or any entity involved in intelligence activities to support "directly or indirectly" military or paramilitary operations in Nicaragua. The prohibitory language was identical to that contained in H.R. 2760, the House's earlier, unsuccessful attempt to amend the Intelligence Authorization Act for fiscal year 1983. The House debated this version of the Boland Amendment on August 2, 1984, and passed it by a vote of 294 to 118.[34]

On the Senate side, the majority once again defeated an effort to include a parallel prohibition in that Chamber's version of intelligence authorization legislation. The vote, which took place after lengthy debate on October 3, 1984, was 42 in favor of including such a prohibition and 57 against.[35]

The conferees ultimately agreed to adopt the House prohibition, but to couple it with an explicit promise to revisit the issue in another 4 months. As finally enacted, Section 8066 of Public Law 98-473, the Continuing Appropriations Act for fiscal year 1985, read:

> (a) During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.
>
> (b) The prohibition concerning Nicaragua contained in subsection (a) shall cease to apply if, after February 28, 1985—
>
> (1) the President submits to Congress a report—
>
> (A) stating that the Government of Nicaragua is providing material or monetary support to anti-government forces engaged in military or paramilitary operations in El Salvador or other Central American countries;
>
> (B) analyzing the military significance of such support;
>
> (C) stating that the President has determined that assistance for military or paramilitary operations prohibited by subsection (a) is necessary;
>
> (D) justifying the amount and type of such assistance and describing its objectives; and
>
> (E) explaining the goals of United States policy for the Central American region and how the proposed assistance would further such goals, including the achievement of peace and security in Central America through a comprehensive, verifiable and enforceable agreement based upon the Contadora Document of Objectives; and
>
> (2) a joint resolution approving assistance for military or paramilitary operations in Nicaragua is enacted.

According to the conferees, up to $14 million in aid to the Contras could be made available upon passage of the joint resolution described in Section 8066(b).[36]

Representative Boland reported to his colleagues that:

> the compromise provision [Section 8066] clearly ends United States support for the war in Nicaragua. Such support for the war can only be renewed if the President can convince the Congress that this very strict prohibition should be overturned.[37]

Responding to an inquiry from another Member, Representative Boland specified "there are no exceptions to the prohibition."[38] Representative Boland plainly viewed the conference compromise as terminating all U.S. Government assistance of any kind until Congress revisited the issue.

On the other side of the Capitol, the Senate emphasized that the prohibition was not necessarily permanent. As Senator Ted Stevens described it, the compromise did not cut the Contras' lifeline, but rather "[put] off the decision until next year." Reacting to a pessimistic assessment from Senator John P. East, he continued:

> Under these circumstances, I do believe the Senator would be unwise to send a message to the Sandinistas that we have abandoned completely support for the Contras. We have set in motion a process by which the President can once again trigger support for the Contras should the Sandinista government persist [in exporting revolution].
>
> * * * * *
>
> I say to my friend we did not win and we did not lose . . . what we are saying to the Sandinistas is, "we have a period of time here because of our internal process and our process of selecting our leader for the next four years . . . and you are put on notice that if the President asks for this money on February 28 . . . we can approve it."[39]

In the interim, according to Senator Stevens, the Contras would be able to tap other sources of support:

> The Contras [already] are supporting themselves with assistance they are getting from elsewhere in the world. Having that assistance out there to be made available on March 31 will encourage that assistance from other sources to the Contras during this period.[40]

Thus, while House conferees hailed Boland II as a victory in the effort to end U.S. involvement in Nicaragua's civil war, the Senate conferees billed it as a draw or, at worst, a temporary setback to be overcome after the Presidential election. But not even Senator Stevens suggested that entities within the U.S. Government could continue covert support for the Contras after enactment of Boland II.

As it turned out, Congress never approved the $14 million allocation. President Reagan made the necessary certification under Section 8066 early in April 1985.[illegible] Senate approved the joint resolution on April 23, 1985, by a vote of 53 to 46.[42] The measure failed in the House, however, by a vote of 180 to 248.[43] As a result, no funds should have been expended by covered entities to support the Contras from the exhaustion of the $24 million appropriation sometime in June, 1984, to the effective date of legislation providing humanitarian aid, August 8, 1985.

Boland II and the NSC Staff

Unlike Boland I, which applied by its terms solely to the CIA and the DOD, Boland II also applied to "any other agency or entity . . . involved in intelligence activities." After this investigation began, members of the Administration asserted that Boland II did not apply to the NSC staff. The Committees disagree, and note that this assertion never was made publicly prior to this investigation.

By its terms, Boland II reached any agency "involved in intelligence activities." Thus, Boland II did not put just the CIA out of the Contra support business; it prevented other government agencies from covertly taking the CIA's place.

The Administration has asserted that Boland II did not apply to the NSC staff because: (1) the NSC does not traditionally engage in intelligence activities; and (2) the phrase "agency involved in intelligence activities" is a statutory term of art which does not include the NSC. These post hoc arguments are not persuasive for a number of reasons.

The statutory language is clear on its face: if an agency is "involved in intelligence activities," then it cannot engage in the proscribed conduct of assisting the Contras. That Boland II did not specifically mention the NSC is of no consequence. The statute mentioned by name those agencies which Congress *knew* would be engaged in intelligence activities, and included a "catch-all" provision to describe all other agencies that were intended to fall within Boland II's reach. This "catch-all" provision is no statutory term of art. Rather, the phrase used by Congress—"any other agency or entity . . . involved in intelligence activities"—is descriptive. For instance, had the NSC staff remained true to the NSC's traditional statutory functions of coordination and oversight, Boland II would not have applied to its activities.

Thus, the law could not be evaded by assigning the prohibited activities or the persons engaged in those activities to a government agency that typically did not engage in "intelligence activities." Any other interpretation would have rendered the law meaningless. The target of Boland II was not the CIA, but any covert operation supporting the Contras, directly or indirectly. Shifting responsibility from the CIA to the NSC staff would have accomplished nothing, other than to change the personnel running the Contra support operation.

North and Poindexter, however, both testified that there was discussion among the NSC staff after Boland II was adopted that it did not apply to the NSC staff. No documentary evidence exists, however, to suggest that this interpretation was ever put forward before August 1985. On the contrary, North's memos and McFarlane's and Poindexter's responses in late 1984 and early 1985 reflect a sensitivity that, at least for the record, the NSC staff had to comply with Boland. McFarlane in his public testimony scoffed at the view that Boland II did not apply to the NSC staff[44]—even though, because McFarlane had not sought immunity, it was in his interest to deny Boland's applicability.

If North and Poindexter had any doubt about the reach of Boland II, they could have obtained legal opinions. The Office of Legal Counsel of the Department of Justice exists to provide legal opinions to the executive branch. The Counsel to the President also renders legal opinions on statutory interpretation; and the Attorney General issues both informal and formal opinions from time to time. But the Justice Department, the Counsel to the President, and the Attorney General were never asked for legal opinions on whether Boland II applied to the NSC staff.[45]

North testified that Professor John Norton Moore of the University of Virginia gave him an opinion that Boland II did not apply to the NSC.[46] Moore is a distinguished professor of law who has written extensively on Executive power. His opinion would carry weight. But Moore has denied that he had ever been asked for or given an opinion on the applicability of Boland II.[47] No written evidence of such an opinion exists.

Because McFarlane headed the NSC staff as National Security Adviser at the time Boland II was enacted, his contemporaneous interpretation of the applicability of Boland II to that staff carries considerable weight. According to McFarlane:

> . . . [T]he law expressly foreclosed even a liaison role for the CIA, or for the Defense Department.

> I interpreted it as well that the NSC was not to itself get involved in military or paramilitary activities or replicating the CIA function in those domains.[48]

Indeed, McFarlane acted on this interpretation.[49]

Such a contemporaneous reading carries the most weight when, as in this matter, the official making the interpretation informed Congress of it.[50] McFarlane's correspondence with Representative Lee H. Hamilton, Representative Michael D. Barnes, and Senator David Durenberger all reflected his understanding.[51]

Legal analysis available at the time reached the same conclusion. An undated memorandum prepared by the Congressional Research Service of the Library of Congress in response to an inquiry dated August 13, 1985, found "strong, if not conclusive evidence that the [language] was intended to apply to the National Security Council."[52] Similarly, a staff memorandum prepared for Representative Henry J. Hyde, which the FBI later found in North's files, explained that the "NSC is clearly a U.S. entity involved in intelligence activities, subject to the Section 8066(a) prohibition." [53]

The opposing view, that the Boland prohibition did not apply to the NSC staff, found its only contemporaneous expression in an opinion by Bretton Sciaroni, counsel to the Intelligence Oversight Board.[54] During Sciaroni's testimony, however, questions were raised about his qualifications to render this opinion. He had never practiced law before becoming the Board counsel.[55] This written opinion was his first on legislation.[56]

More importantly, Sciaroni based his opinion on certain key factual premises that turned out to be incorrect. Addressing the statute's language, Sciaroni admitted in his opinion that, "on the face of it the NSC would appear to be an agency or entity of the United States covered by the amendment."[57] He concluded that the NSC was not an agency or entity "involved" in intelligence activities from the factual premise that "it is a coordinating body with no operational role," so that the NSC "does not function as an operational unit."[58]

North, however, confirmed that he had been conducting the "full-service covert operation," depicted in extensive evidence before the Committees. By itself, this assertion put the NSC within Boland II's coverage of "any agency or entity of the United States Government involved in intelligence activities."

Asked at the hearings, "[were you] told at that time that [the NSC staff] was, in fact, involved in intelligence operations?" Sciaroni responded, "No, I was not told that."[59] He explained more fully:

> Q: Well, I am simply asking you, sir, isn't it true that the conclusion [of your opinion] was based on failure to communicate information to you?
>
> A: True.
>
> Q: You didn't have the facts?
>
> A: That is true.
>
> Q: And it was the incorrect facts in part upon which your opinion was based?
>
> A: That is absolutely correct.[60]

In any event, the Sciaroni opinion was not unveiled until long after North's activities began to unravel. Poindexter acknowledged his reason for keeping its conclusion under wraps: fear that if Congress learned that the NSC staff was even entertaining the notion that it was exempt from Boland II, Congress would act to eliminate any such misconception.[61] Instead, Congress was told that the NSC staff was observing the letter and spirit of Boland.

In August 1985, the House and Senate Intelligence Committees and the House Foreign Affairs Committee each inquired about the activities of the NSC staff and of North. McFarlane replied that the NSC was complying with the letter and spirit of the law.[62]

Poindexter denied that he saw this response at the time, although the record shows that he assembled the team to handle the response and that he was sent a draft for comment.[63] He claimed that, when he finally saw the McFarlane draft in the Tower Review Board Report, he was surprised by its language.[64]

But, in the summer of 1986, the House Intelligence Committee would conduct another inquiry of North, an inquiry Poindexter deflected by noting that McFarlane had previously certified that "the actions of the National Security Council staff were in compliance with both the spirit and the letter of the law regarding support of the Nicaraguan resistance."[65]

The message to Congress was clear and consistent: Boland II did not need clarification. It covered the NSC, which "was complying." Indeed, no one expressed this more forcefully than McFarlane at the public hearings:

> And I think also that the evidence that surely I did believe that the Boland Amendment applied to the NSC staff is expressed in the fact that otherwise why would we have worked so hard to get rid of it after it was passed? If we felt that we were not covered, what was I doing? What were we doing coming up here day after day trying to get rid of it? [66]

Even by its terms, the Sciaroni opinion did not give North—or Poindexter—a clean bill of health. Sciaroni noted that if North's salary was borne by the DOD, an entity expressly named in Boland II, he could be subject to its restrictions. This, in fact, was the case.[67] Referring to this caveat in Sciaroni's opinion, Poindexter testified in his deposition that, "we were willing to take some risks in order to keep the Contras alive. . . ." [68]

The Meaning of "Indirect" Support

Boland II prohibited the obligation or expenditure of appropriated funds "for the purpose or which would have the effect of supporting" the Contras "directly or indirectly." Viewed narrowly, this statute forbade only the provision of government money or material to the Contras.

Representative Boland, on the other hand, read his amendment more broadly at the time of its enactment so as to give meaning to the phrase "directly or indirectly":

> Let me make very clear that this prohibition applies to all funds available in fiscal year 1985 regardless of any accounting procedure at any agency. It clearly prohibits any expenditure, including those from accounts for salaries and all support costs. The prohibition is so strictly written that it also prohibits transfers of equipment acquired at no cost.[69]

Opinions issued by the Comptroller General of the United States in other contexts would seem to confirm Representative Boland's interpretation.[70] Moreover, McFarlane candidly told the Committees that, during his tenure as National Security Adviser, he understood that Boland II precluded any assistance by the NSC staff to the Contras.[71]

Once again, North took a position contrary to that of his former boss. After describing his "full-service covert operation,"[72] North agreed on the one hand that the Boland Amendment applied to "U.S. Government funds":

> And my understanding—and I have not read Boland, the Boland amendments in some time, but my understanding then was that what we could not do is take and expend funds which had been made available to the CIA and the DOD, et cetera, for the purpose of providing direct or indirect support for military and paramilitary operations in Nicaragua.
>
> That is a memory that is over seven months old, but I think that was what the intent was.
>
> Certainly the way we pursued it and we made every effort not to expend U.S. Government funds to support the Nicaraguan resistance. . . .[73]

On the other hand, North did not count fixed operating costs, such as his appropriated salary, as covered by the Boland II prohibition:

> Q: You were aware, I take it, that salaries were included in the Boland Amendment?
>
> A: No—not mine.[74]

But, as noted above, Representative Boland clearly considered salaries within the ambit of the legislation he sponsored.

The historical background provides the reason for Boland II's comprehensive coverage. Boland II had emerged in reaction to the revelation of the CIA's role in the mining of Nicaraguan harbors. At that time, the CIA had allegedly exceeded the $24 million limit in conducting that operation. According to reports, the CIA had attempted to obscure this overrun by charging to its overall operating budget the $1.2 million cost of a vessel deployed during the mining of the harbors.[75] Representative Boland's explanation that the amendment "clearly prohibits any expenditure, including those from accounts for salaries and all support costs" anticipated and rejected use of a rationalization similar to North's by which costs charged to an "overall operating budget" were ignored for determining compliance with a funding cutoff. The prohibition against the CIA funds "available" to it precluded that agency from using its contingency reserve or any funds at its disposal.

In the Committees' view, Boland II had a discernible purpose: to end *covert* support for the Contras by the United States. Once the NSC staff became involved in intelligence operations and continuing covert, albeit quasi-private, assistance to the Contras, both the letter and spirit of Boland II were violated.

Humanitarian Aid: August 8, 1985, to March 31, 1986

The day after rejecting the joint resolution required by Boland II to "unfence" the $14 million in military aid, the House—by a vote of 213 to 215—rejected an amendment that would have released that amount as "humanitarian assistance." [76]

Six weeks later, in June 1985, the Senate considered, and the House reconsidered, the concept of humanitarian aid to the Contras. In both Chambers, proponents stressed the Contras' needs for food, clothing, and medical supplies.[77] In both Chambers, opponents suggested that the provision of humanitarian assistance to a fighting force was a Trojan horse concealing military assistance.[78]

The Senate approved its version of this legislation on June 6, by a vote of 52 to 42. In addition to unfencing the previously appropriated $14 million, it authorized an additional $24 million, with the entire $38 million to be spent solely on humanitarian aid.[79]

Thereafter, a major reversal occurred in the House. On June 12, that Chamber voted 248 to 184 to include $27 million in humanitarian aid in a supplemental appropriations bill.[80] This change may have been attributable, at least in part, to a highly publicized trip made by Nicaraguan President Daniel Ortega to Moscow shortly before that vote.[81]

During consideration of this legislation, some attention was focused on which agency would administer the humanitarian assistance. The Senate bill included a provision allowing "the National Security Council to monitor the use of funds."[82] This approach would have given the NSC staff a legal role in managing funds for the Contras. Proposals for a CIA role were also made. On the other hand, the House, opposed any statutory role for DOD or CIA.[83]

In the end, the conferees declined to include the NSC in the administration of the humanitarian aid program.[84] Instead, the Nicaraguan Humanitarian Assistance Office (NHAO) was created in the Department of State to administer the humanitarian aid. Significantly, the NHAO appropriation retained the prohibitions of Boland II except for that relaxation necessary to authorize the humanitarian aid itself. In addition, related legislation included:

> —The "Pell Amendment," a prohibition against the United States "enter[ing] into any arrangement conditioning, expressly or implicitly, the provision of assistance under [the International Security and Development Act] or the purchase of defense articles and services under the Arms Export Control Act upon the provision of assistance by a recipient" to the Contras;[85] and
>
> —The "Kerry Amendment," which prohibited the use of any funds to support, "directly or indirectly, activities against the government of Nicaragua which have not been authorized by, or pursuant to law, and which would place the United States" in violation of international law.[86]

All these provisions became effective on August 8, 1985.

Exchange of Intelligence

One week later, the President signed a Supplemental Appropriations Act for fiscal year 1985, Public Law 99-88, that included another provision relevant to the Committees' inquiry. After incorporating by reference the prohibitions contained in Boland II and suspending those prohibitions only insofar as necessary to distribute the humanitarian aid authorized a week earlier, the Act provided:

> Nothing in this Act [or Boland II] shall be construed to prohibit the United States government from exchanging information with the Nicaraguan democratic resistance.[87]

The conference report accompanying the earlier legislation providing humanitarian assistance similarly prescribed that, "none of the prohibitions on the provision of military or paramilitary assistance to the democratic resistance prohibits the sharing of intelligence information with the democratic resistance."[88]

Beginning with the enactment of Boland II, debate had arisen over the permissibility and desirability of providing the Contras with intelligence information. Keyed as it was to the expenditure or obligation of funds, including salaries and support costs, Boland II prohibited any significant transfer of intelligence information or resources to the Contras. This conclusion is bolstered by the legislative history of H.R. 2760, the textually similar but unapproved amendment to the Intelligence Authorization Act for fiscal year 1983.[89]

The breadth of Boland II's original prohibition had raised concern in the intelligence community about the handling of "defensive" intelligence, that is, intelligence that, if provided to the Contras, could prevent needless loss of life.

Responding to this perceived problem, the CIA had proposed guidelines, which met resistance from the House Intelligence Committee, that would have allowed it to pass intelligence:

> on a case by case basis where:
>
> (1) the lives of U.S. persons are at stake either inside or outside Nicaragua;
>
> (2) the lives of third country non-combatants are at stake either inside or outside Nicaragua; or
>
> (3) a holocaust-type situation may occur involving substantial loss of life, or threatening the continued existence of the opposition groups (for example, ambush or imminent attack).[90]

Ultimately, the CIA agreed to notify the Intelligence Committees each time they invoked these guidelines to transfer intelligence, and to justify that action fully as a humanitarian necessity.[91]

While textual support in Boland II for a distinction between offensive and defensive intelligence is difficult to discern, the abstract utility of defensive intelligence had some appeal. Speaking against an amendment to provide a more explicit exception allowing for the exchange of intelligence, Representative Boland pointed to the CIA's guidelines:

> [W]hat about a situation where a large concentration of Contras—perhaps unarmed or in a sanctuary along the border—is about to be attacked by the Sandinistas in their new Soviet helicopters.
>
> Can't the Central Intelligence Agency warn them?
>
> Well, Mr. Chairman, they can.
>
> Now, where do I get that interpretation?
>
> I get it, Mr. Chairman, from the Central Intelligence Agency.
>
> They have told the Intelligence Committee that it is their interpretation of the present limitation that it does not prohibit the provision of intelligence—so called defensive intelligence—to the

> Contras to prevent a massacre or a holocaust-type of situation.
>
> They say they can't provide intelligence to support military activities in the field, but they can provide humanitarian warning of catastrophic attacks.
>
> So, Mr. Chairman, my amendment [which would have continued the Boland II prohibitions] does permit—as the intelligence community tells us—the provision of intelligence in extraordinary circumstances where the real prospect of a substantial loss of life exists.[92]

The legislation that became effective August 15, 1985, provided that nothing in Boland II or the International Security and Development Act would thereafter prohibit "exchanging information" with the Contras. As the legislative history makes clear, moreover, the "information" that could be exchanged included intelligence.[93] Representative Hyde, a supporter of the exception, suggested that the exception would allow the transfer of intelligence, not only in support of humanitarian aid, but also "so [the Contras] can defend themselves against the helicopter gunships."[94] Representative Joseph P. Addabbo, an opponent of the exception, cited its ambiguity as a reason to reject it:

> Under Section 102 . . . the current prohibition . . . is interpreted to allow the United States government to exchange information with the Contras. I am not sure anybody can tell me the effect of this interpretation but, of course, this would mean that the Central Intelligence Agency involvement with the Contras would be started again. What type of information will be exchanged is limited only by your imagination. In addition to intelligence information, could training procedures for the Contras be exchanged, could instruction in terrorist activities be exchanged, could instruction on the planting of bombs or ships be exchanged? Who would define the type of information to be exchanged? Nobody knows, is the answer.[95]

The Permissibility of Solicitation

Boland II did not contain a provision specifically addressing third-country solicitation. But the subject had not been overlooked either in Congress or in the executive branch.

In 1984, before Boland II was adopted but as Contra funding was running out, third-country funding became the focus of a legal debate within the Administration. At a National Security Planning Group meeting in June 1984, Secretary of State Shultz conveyed the concern of White House Chief of Staff James A. Baker, III, who was not present, that solicitation and control of third-country funding for the Contra program was an "impeachable offense." Others at the meeting asserted that if the United States did not serve as a conduit for the funds, third country solicitation was permissible. The following day, Attorney General William French Smith orally expressed his opinion to Casey that solicitation was lawful as long as there was no quid pro quo.[96] In October 1984, Congress complicated the legal picture further by passing Boland II with its prohibition of expending funds to provide support, "directly or indirectly."

After Boland II was in place, the State Department agreed in early 1985 that the legislation barred solicitation or encouragement of contributions to the Contras. In March 1985, appearing before the Senate Committee on Foreign Relations, Assistant Secretary of State for Inter-American Affairs, A. Langhorne Motley—Elliott Abrams' predecessor—was asked for assurances that the Administration knew, and agreed, that solicitation of funds from third countries was prohibited; he agreed with that interpretation and gave those assurances. Motley stated, "even if today we wanted to go to third countries to encourage or solicit, we could not because there is a prohibition."

Senator Christopher J. Dodd asked, "all I am asking from you is, and from the administration more directly, is whether or not we can have an assurance that there will be no indirect efforts made to finance the Contra operation through third party nation . . . ." Motley responded: "I think that was one thing that was loud and clear with us when I started. I told you that we understood what it means, direct and indirect, including third party."

After being asked again, and giving that same assurance (Senator Dodd: "We have that assurance, then?" Motley: "That is right. . . . I think that is an easy assurance to give, Senator. . . ."), Motley described Boland II's prohibition this way:

> Nobody is trying to play games with you or any other Member of Congress. That resolution stands, and it will continue to stand, and it says no direct or indirect. And that is pretty plain English; it does not have to be written by any bright, young lawyers. And we are going to continue to comply with that.[97]

The State Department gave the same interpretation and assurance in at least one other hearing.[98] The CIA also took the position that Boland II prohibited it from engaging in any third-country solicitation.[99]

McFarlane took a similar position with respet to the NSC and, according to his testimony, so instructed his staff.[100] He specifically told Congress that the NSC staff was not soliciting funds.[101] North denied receiving any such instruction, but nevertheless prefaced every meeting with potential contributors with a disclaimer that he was not soliciting.[102]

Indeed, North wrote a memorandum to McFarlane outlining the options for financing the Contras. He noted that Boland II was silent on third-country funding but that Congress would regard it as an evasion of the law. He therefore concluded that third-country solicitation could be safely undertaken only upon consultation with Congress and with the risk that it might say no.[103] At the time North wrote the memorandum, he was secretly involved in trying to raise money from Far Eastern countries, and a Middle Eastern country had already contributed $32 million.

On August 8, 1985, with the enactment of the Pell Amendment, U.S. officials were prohibited from agreeing, "expressly or implicitly," that foreign aid or military assistance would be contingent upon assistance to the Contras. In their report on that legislation, the conferees attempted to draw a distinction between discussing U.S. policies in Central America and agreeing on a quid pro quo:

> The purpose of the [Pell Amendment] is to prohibit the United States from furnishing economic or military assistance or selling United States military equipment on the condition, either expressly or implicitly, that the recipient or purchaser provide assistance to insurgents involved in the struggle in Nicaragua. This section does not prohibit United States government officials from discussing United States policy in Central America with recipients of United States assistance or purchasers of United States military equipment.[104]

The conferees specified that the legislation did not prohibit "recipients of United States assistance from furnishing assistance to any third party on their own volition and from their own resources."[105]

Thus, at least as of August 8, 1985, while Congress acknowledged that Administration officials were permitted to discuss Central American policy with foreign countries, and that those foreign countries could "on their own volition" contribute their own funds to the Contras, it clearly proscribed any quid pro quo, expressed or implied, for any contribution by a foreign country.[106] A question not addressed by the conferees was whether Administration officials could, consistent with Boland II, *solicit* contributions from foreign countries. In the Committees' judgment, however, any such solicitation by a covered entity, including the NSC staff, would have been prohibited by Boland II because it would have involved, at a minimum, salaried employees.

Boland III: December 4, 1985, to October 17, 1986

Boland III was embodied in various statutory provisions covering aid to the Contras during the period from December 4, 1985 to October 17, 1986, particularly in Public Law 99-169, Section 105, and Public Law 99-190, Section 8050. Public Laws 99-88 and 99-83, which approved humanitarian assistance, extend into this period but are considered in the previous section of this chapter.

Public Law 99-169, enacted on December 4, 1985, reads:

> Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or to section 106 of the Supplemental Appropriations Act, 1985 (Public Law 99-88). Nothing in this section precludes—(1) administration, by the Nicaraguan Humanitarian Assistance Office established by Executive order 12530, of the program of humanitarian assistance to the Nicaraguan democratic resistance provided for in the Supplemental Appropriations Act, 1985, or (2) activities of the Department of State to solicit such humanitarian assistance for the Nicaraguan democratic resistance.

Public Law 99-190, Section 8050, became effective on December 19, 1985, and reads:

> None of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended during fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance unless in accordance with the terms and conditions specified by section 105 of the Intelligence Authorization Act (Public Law 99-169) for fiscal year 1986.

A classified amount was appropriated to the CIA to provide the Contras with communication equipment and related training. An additional classified amount was allocated to bolster intelligence-gathering in the region. Thus, Boland III permitted covered agencies to support the Contras only in particular ways, specifically by the provision of communications equipment, related training, and intelligence "information and advice."

Exchange of Intelligence

The Administration's ability to offer intelligence to the Contras, first acknowledged in August 1985, continued with the enactment of Boland III. In addition, specific, classified appropriations were made to enhance the exchanges of intelligence. But ambiguities as to the scope of the exception persisted.

The CIA, for example, believed that it was not authorized to provide specialized logistics training.[107] The President's Intelligence Oversight Board, on the other hand, interpreted the legislation as allowing military training, "so long as such training does not amount to the participation in the planning or execution of military or paramilitary operations in Nicaragua."[108]

Solicitation

Section 105(b)(2) of Public Law 99-169 explicitly stated that "nothing in this section precludes . . . activities of the Department of State to solicit . . . humanitarian assistance for the Nicaraguan democratic resistance." The Administration had sought this exception, but notably did not ask for permission to solicit lethal aid. The House conferees, moreover, specified that Boland III was intended to prohibit any solicitation that it did not authorize explicitly:

> [The] State Department may solicit, through its normal diplomatic contacts, humanitarian assistance of the same type as is authorized by the Supplemental Appropriations Act for fiscal year 1985. *No other department or agency involved in intelligence activities may engage in any type of solicitation for the Contras.*[109]

Renewed Assistance: October 18, 1986, to September 30, 1987

By mid-1986, the mood of Congress had shifted back in favor of supporting the Contras. Ultimately, Congress would provide $100 million for the Nicaraguan opposition, of which $70 million could be used for non-humanitarian purposes.

This swing began on March 27, 1986, when the Senate approved S.J. Res. 283 to provide $100 million for the anti-Sandinista forces. Senator Lugar sponsored an amendment that contained no restrictions on the use of the CIA; it passed by a vote of 53 to 47.[110] Amendments offered by Senators Edward M. Kennedy and Jim Sasser seeking to prevent funds from being used for military purposes were rejected.[111]

On June 25, 1986, the House approved an amendment offered by Representative Don Edwards, which became Title II of the Military Construction Appropriation Act for Fiscal Year 1987, by a vote of 221 to 209.[112] Under this legislation, $100 million of unobligated DOD funds for fiscal year 1986 could be used for the Nicaraguan opposition.[113] On August 13, 1986, the Senate adopted the House position and subsequently approved the entire bill. Title II was ultimately incorporated into Public Law 99-500, which became effective on October 18, 1986.[114]

The Boland Amendments Were Violated in Letter and Spirit

Boland II forced the CIA to withdraw from its role of financing, arming, training, clothing, feeding, and supervising the Contras. But the vacuum was quickly filled. Acting to carry out the President's direction to keep the Contras together "body and soul," North, with the express approval of Poindexter and at least the acquiescence of McFarlane, took over where the CIA left off. With North as the action officer, the NSC staff raised funds from third countries, directed whether those funds should be sent to Secord or Calero, recruited the Enterprise to handle the logistics, helped the Enterprise run the resupply operation for the men in the field, and gave the ultimate directions to Secord and his aides on how to conduct the operation. Even an ambassador, Lewis Tambs, took orders from North on opening a front against the Sandinistas.

An isolated act of assisting the Contras may have presented a close question of law under Boland II and III. But the NSC staff's activities were not so limited. Its support for the Contras was systematic and pervasive. As the CIA had done before Boland II, the NSC staff now ran the Contra insurgency. According to Poindexter, North "was the switching point that made the whole system work . . . . I viewed Ollie as the kingpin to the Central American opposition once the CIA was restricted."[115]

Moreover, while the NSC staff started its support of the Contras at least in part with private funds, the diversion gave it control over funds that belonged to the United States. The profits that were skimmed were generated by the sale of weapons belonging to the United States. North, sometimes with the assistance of Earl, fixed the mark-up to ensure that there would be money to divert. The Secord-Hakim Enterprise was not only brought into the sales as the "agent of the CIA," but, according to Hakim's and Secord's testimony, functioned at North's direction.

Because Boland II and III both prohibited direct or indirect use of the United States funds, the diversion was a flagrant violation of those proscriptions.

Even the amendment to Boland III, authorizing the State Department to solicit humanitarian funds for the Contras, was abused by the NSC. When Brunei agreed to transfer $10 million, North gave Abrams the account number of Lake Resources. According to Abrams, North represented that this account was one of Calero's and that the money would be used for non-lethal expenditures. But, in fact, it was controlled by the Enterprise and was used to pay for arms for the Contras, to pay their leaders, and to finance the military airlift. Giving Abrams the Lake Resources account was a deliberate effort to divert funds solicited for humanitarian purposes to lethal ends, and was foiled only because of an error in the account number.

The Administration only recently has asserted that Congress lacked the authority to restrict the President's options in Nicaragua in the manner it did. As in the case of the Sciaroni opinion, at no time prior to public disclosure of alleged violations of the Boland Amendments did the Administration come forward to challenge their constitutionality. On the contrary, Congress and the American people were routinely being assured that the statutes were being observed, "in letter and in spirit." As President Reagan himself stated during a press conference on April 14, 1983, "But what I might wish or our government might wish still would not justify us violating the law of the land."[116]

Surely an Administration should identify in a timely fashion those laws it claims a constitutional prerogative to ignore or subvert. But even beyond the aura of disingenuousness, the attack on the constitutionality of the Boland Amendment falls, in the Committees' collective opinion, far short of the mark.

The analysis must begin, of course, with an appropriate statement of what is, and is not, in issue. Some have attempted, for example, to cast the Boland Amendments as violative of the Supreme Court's famous dictum in *United States* v. *Curtiss-Wright Export Corp.*,[117] referring to:

> the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress . . ."

But one does not have to be a proponent of an imperial Congress to see that this language has little application to the situation presented here. We are not confronted with a situation where the President is claiming inherent constitutional authority in the absence of an Act of Congress. Instead, to succeed on this argument the Administration must claim it retains authority to proceed in derogation of an Act of Congress—and not just any act, at that. Here, Congress relied on its traditional authority over appropriations, the "power of the purse," to specify that no funds were to be expended by certain entities in a certain fashion.

Bearing this in mind, the Committees believe a more instructive decision than *Curtiss-Wright* is *Dames & Moore* v. *Reagan*.[118] There, the Supreme Court upheld Executive Orders issued by President Carter to govern the treatment of claims against Iran after resolution of the hostage crisis 1979 and 1980. Chief Justice Rehnquist, then an associate justice, wrote for the Court and quoted portions of a concurring opinion filed by Justice Jackson in the *Steel Seizure Case*.[119] According to Chief Justice Rehnquist:

> When the President acts pursuant to an express or implied authorization from Congress, he exercises not only his powers but also those delegated by Congress. In such a case the executive action "would be supported by the strongest presumptions and widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it." When the President acts in the absence of congressional authorization he may enter a "zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." In such a case, the analysis becomes more complicated, and the validity of the President's action, at least so far as separation-of-powers principles are concerned, hinges on a consideration of all the circumstances which might shed light on the views of the Legislative Branch toward such action, including "congressional inertia, indifference or quiescence." Finally, *when the President acts in contravention of the will of Congress, "his power is at its lowest ebb"* and the Court can sustain his actions "only by disabling the Congress from action on the subject." [120]

As the Committees have already noted, the Administration's activities in support of the Contras were conducted in direct contravention of the will of Congress. It follows, then, that the President's constitutional authority to conduct those activities was "at its lowest ebb."

It strains credulity to suggest that the President has the constitutional prerogative to staff and fund a military operation without the knowledge of Congress and in direct disregard of contrary legislation. To endorse such a prerogative would, in the language of *Dames & Moore*, "[disable] the Congress from action on the subject" and leave the Administration entirely unaccountable for such clandestine initiatives.

In Federalist 75, Alexander Hamilton cautioned against granting the President too much authority over foreign affairs:

> The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests so delicate and momentous a kind as those which concern its intercourse with the rest of the world to the sole disposal of a magistrate, created and circumstanced, as would be a president of the United States.

While each branch of our Government undoubtedly has primacy in certain spheres, none can function in secret disregard of the others in any sphere. That, in essence, was the Administration's attempt here.

Congress must be able to depend upon the President for the execution of laws. It cannot be thrust into an adversarial role in which it must treat representations from the President's staff with skepticism and incredulity. If the President believes that a law has provisions that are unconstitutional, he must either veto it or put Congress on notice of his position—as he did with portions of Gramm-Rudman. The one option the executive branch does not have is to pretend that it is executing the law when it is, in fact, evading it.

The American system works well only when its branches of government trust one another. The Iran-Contra Affair is a perfect example of how to destroy that trust.

Chapter 26

1. Report of the National Bipartisan Commission on Central America, Henry Kissinger, Chairman, Washington, D.C., 116 (1984).

2. The Congressional Research Service has compiled a complete legislative history of the Boland Amendments, which is reproduced at Vol. 133, No. 97, *Cong. Rec.* (daily ed., June 15, 1987), 4577–4990.

3. The contingency reserve is comprised of funds appropriated by Congress for use by the CIA in covert operations.

4. *See generally,* Amendment to the Intelligence Authorization Act for Fiscal Year 1983, 98th Cong., H. Rep. 98–122, parts 1 and 2, May 13 and June 14, 1982.

5. Amendment to the Intelligence Authorization Act for Fiscal Year 1983, 98th Cong., H. Rep. 98–122, at 8.

6. *See, e.g.,* "Fears of War Along the Border: A Covert United States Operation Slowly Spins Out of Control," Time, Dec. 6, 1982, at 37, 40; "A Secret War for Nicaragua," Newsweek, Nov. 8, 1982, at 42–53.

7. Vol. 128, No. 143, *Cong. Rec.*, H9148–49 (daily ed., Dec. 8, 1982).

8. Vol. 128, No. 143, *Cong. Rec.*, H9158 (daily ed., Dec. 8, 1982).

9. Vol. 128, No. 143, *Cong. Rec.*, H9156 (daily ed., Dec. 8, 1982).

10. Vol. 128, No. 143, *Cong. Rec.*, H9159 (daily ed., Dec. 8, 1982).

11. Vol. 128, No. 151, *Cong. Rec.*, S15350–51 (daily ed., Dec. 18, 1982).

12. P.L. 97–377, Section 793, 96 Stat. 1830.

13. The Continuing Appropriations Act for Fiscal Year 1984, P.L. 98–107, Section 101(c), 97 Stat. 735, provided, in a section devoted to appropriations for DOD and CIA appropriations, that "no appropriation or funds made available or authority granted pursuant to this subsection shall be used to initiate or resume any project, activity, or organization . . . for which appropriations, funds, or other authority were not available during FY83." This provision would appear to have extended Boland I's prohibition from Oct. 1, 1983, to the enactment of Boland II as part of the Department of Defense Appropriations Act, P.L. 98–212, 97 Stat. 1452, on Dec. 8, 1983.

14. H.R. Rep. No. 98–122, 98th Cong., 1st Sess., Pt. 1 at 11 (May 13, 1983).

15. This conclusion was reached both by the Office of Legal Counsel of the Department of Justice and by the President's Intelligence Oversight Board. See Memorandum for the Attorney General from Theodore B. Olsen, Assistant Attorney General, Office of Legal Counsel, dated Apr. 27, 1984 (J7905–J7926), at 12; Memorandum for the President's Intelligence Oversight Board from Robert F. Turner, Counsel, dated Apr. 6, 1983 (J4808–J4837), at 16–21.

16. The transition in the Administration's rationale for its support of the Contras can be traced through public statements made by the President and also through the evolution of the Presidential Findings on Central America and Nicaragua. *See* Public Papers of the President: Ronald Reagan, Vol. I, January to June 1984 (Washington, D.C.: U.S. Government Printing Office, 1986), at 384, 503–504, 726; *see also* Presidential Findings on Central America and Nicaragua, N16574, C06930, N32003–N32005, N17081–N17082, N9246–N9247.

17. Amendment to the Intelligence Authorization Act for Fiscal Year 1983, 98th Cong., H.R. 2760, July 28, 1983. See Section 801(a).

18. Amendment to the Intelligence Authorization Act for Fiscal Year 1983, 98th Cong., H.R. 2760, July 28, 1983.

19. See note 13, *supra,* regarding the status of Boland I after September 30, 1983.

20. Intelligence Authorization Act for Fiscal Year 1984, 98th Congress, H.R. 2968, May 16, 1983. The Committee's report simply incorporated by reference its earlier report on H.R. 2760.

21. See note 13, *supra,* regarding the status of Boland I after September 30, 1983.

22. Vol. 129, No. 138, *Cong. Rec.*, H8389–8432 (daily ed., Oct. 20, 1983).

23. Vol. 129, No. 149, *Cong. Rec.*, S15295 (daily ed., Nov. 3, 1983).

24. Vol. 129, No. 161, *Cong. Rec.*, H10544 (daily ed., Nov. 18, 1983). Representative Boland's comments and House debate of November 18 on H.R. 2968.

25. Vol. 129, No. 161, *Cong. Rec.*, H10544 (daily ed., Nov. 18, 1983).

26. Vol. 129, No. 161, *Cong. Rec.*, H10487 (daily ed., Nov. 18, 1983).

27. Department of Defense Appropriations Act for Fiscal Year 1984, 98th Cong., P.L. 98–212, Stat. 1952, Section 775; Intelligence Authorization Act for Fiscal Year 1984, 98th Cong., P.L. 98–215, Stat. 1975, Section 108.

28. Continuing Appropriations for Fiscal Year 1985, 98th Cong., P.L. 98–473, Section 8066, Stat. 1935, 1984.

29. 1984 Cong. Quarterly Almanac 89.

30. Letter of April 9, 1984, from Chairman Goldwater to Director Casey.

31. 1984 Cong. Quarterly Almanac 89.

32. Senate amendment to H.R. 2163; House, adoption of H. Con. Res. 290.

33. The United States contested the Court's jurisdiction, and made no presentation on the merits of the suit.

34. Vol. 130, No. 101, *Cong. Rec.*, H8284 (daily ed., Aug. 2, 1984).

35. Vol. 130, No. 129, *Cong. Rec.*, S12879 (daily ed., Oct. 3, 1984).

36. Continuing Appropriations for Fiscal Year 1985 and for Other Purposes, 98th Cong., 2nd Sess., H. Rep. 98–1159 at 382.

37. Vol. 130, No. 133, *Cong. Rec.*, H11974 (daily ed., Oct. 10, 1984).

38. Vol. 130, No. 133, *Cong. Rec.*, H11980 (daily ed., Oct. 10, 1984).

39. Vol. 130, No. 134, *Cong. Rec.*, S14205 (daily ed., Oct. 11, 1984).

40. Vol. 130, No. 134, *Cong. Rec.*, S14205 (daily ed., Oct. 11, 1984).

41. President Reagan "Central American Peace Proposal," Apr. 4, 1985, from Weekly Compilation of Presidential Documents, Vol. 21, No. 14, at 416–20.

42. Vol. 131, No. 48, *Cong. Rec.*, S58924–25 (daily ed., Apr. 23, 1985).

43. Vol. 131, No. 48, *Cong. Rec.*, H9085–86 (daily ed., Apr. 23, 1985).

44. McFarlane Test., *Hearings*, 100-2, at 129-30; *id.*, *Hearings*, 100-7 Part II, 7/14/87, at 202.

45. Poindexter Test., *Hearings*, 100-8, 7/17/87, at 176.

46. North Test., *Hearings*, 100-7, Part I, 7/9/87, at 203.

47. Moore Int., 8/5/87; The Dallas Morning News, 7/16/87, at 10A.

48. McFarlane Test., *Hearings*, 100-2, 5/14/87, at 20.

49. *See, e.g.*, Ex. RCM 30B (Memorandum from North recommending that North be allowed to approach private donors for replacement of Contra helicopter; handwritten notation by McFarlane on memorandum that "I don't think this is legal").

50. *See, e.g.*, Bob Jones University v. United States, 461 U.S. 574 (1983).

51. Exs. RCM 41C, 40B, and 41E.

52. Memorandum of Raymond J. Celada, Senior Specialist in American Public Law, American Law Division, Cong. Research Service, Library of Congress, regarding "Legality of NSC Involvement in Support of the Contras," [hereinafter "Celada memorandum"] at 12. On the copy provided to the Committee, the addressee and the date of the memorandum have been deleted. According to its text, however, it was written in response to an "inquiry of August 13, 1985." *Id.*, at 1.

53. Ex. BSG 26. These contemporaneous opinions relied to varying degrees upon the basic legal authorities under which the NSC staff operated., The NSC and its staff were created by the National Security Act of 1947. The Act provides: "the function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. . . ." Section 402(c) states: "the Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President. . . ." Section 102, which created the CIA, begins by stating, "there is hereby established under the National Security Council a Central Intelligence Agency. . . ." 50 U.S.C. sec. 403 [emphasis added]. From its inception, the CIA has been "under" the NSC. Executive Order No. 12,333, the Administration's charter for intelligence activities, states that the NSC "shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs." ("Special activities" is a term generally applied to covert actions.)

54. Ex. BGS-9.

55. Sciaroni Test., *Hearings*, 100-5, 6/8/87, at 33; *id.* at 46.

56. *Id.* at 145.

57. Ex. BGS 9 at 2.

58. Ex. BGS 9 at 5, 6.

59. Sciaroni Test., *Hearings*, 100-5, 6/8/87, at 20.

60. *Id.*

61. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 84-85.

62. Ex. RCM 40B.

63. Exs. JMP 7A, JMP 8, JMP 9 and JMP 10.

64. Poindexter Dep., 7/2/87, at 56.

65. Ex. JMP 14.

66. McFarlane Test., *Hearings*, 100-8, 7/14/87, at 204.

67. See Ex. BGS 9, at 3, n.5.

68. Poindexter Dep., 5/2/87, at 51.

69. Vol. 130, No. 133-4, *Cong. Rec.* (daily ed., Oct. 10 and 11, 1984).

70. In Decision B-201260, 60 Comp. Gen. 440 (1981), for example, the Comptroller General found that a provision forbidding the Customs Service from using any funds in its appropriation to pay overtime in excess of $20,000 to any single employee had been violated by an overpayment of $194.17, even though that amount had been reimbursed to the Service. In finding a violation, the Comptroller General cited, in particular, "the Administrative expenses of paying the excess $194.17 in overtime compensation," even though those expenses were "minimal." *See also* Decision B-196559, 59 Comp. Gen. 115 (1979) (interpretation of anti-lobbying restriction). *See generally* Principles of Federal Appropriations Law, at 3-24 to 3-210 (GAO 1982).

71. McFarlane Test., *Hearings*, 100-2, 5/12/87, at 129-30.

72. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 154.

73. *Id.*, at 164.

74. *Id.*, at 170.

75. 1984 Cong. Quarterly Almanac 90.

76. Vol. 131, No. 49, *Cong. Rec.* (daily ed., Apr. 24, 1985) vote on Michael amendment.

77. Vol. 131, No. 73, *Cong. Rec.*, S7637 (daily ed., June 6, 1985) Senate debate.

78. Vol. 131, Nos. 73, 80, *Cong. Rec.* (daily ed., June 6 and 12, 1985).

79. Vol. 131, No. 73, *Cong. Rec.*, S7628-S7648 (daily ed., June 5, 1985).

80. Vol. 131, No. 80, *Cong. Rec.*, H4169-H4170 (daily ed., June 12, 1985).

81. Daniel Ortega went to Moscow on April 28, 1985.

82. 131 Cong. Rec., S7628, June 6, 1985.

83. H.R. 2577, Ch. V.

84. Conf. Rep. No. 99-236, 99th Cong., 1st Sess., at 56 (July 2, 1985).

85. International Security and Development Cooperation Act of 1985, 99th Cong., P.L. 99-83, Section 722(d), Stat. 149, Aug. 8, 1985.

86. International Security and Development Cooperation Act of 1985, 99th Cong., P.L. 99-83, Section 722(e), Stat. 149, Aug. 8, 1985.

87. Supplemental Appropriations for the Fiscal Year Ending September 30, 1985, 99th Cong., P.L. 99-88, Stat. 324, Section 102(b).

88. International Security and Development Cooperation Act of 1985, P.L. 99-83, 99th Cong., Section 722(g), Stat. 249, Aug. 8, 1985; Conference Committee Report on 99-83, at 144.

89. H. Rep. 98-122, which accompanied H.R. 2760, stated that the legislation would "not prohibit the collection, production, or analysis of intelligence by U.S. intelligence elements, nor the provision of such intelligence to friendly foreign countries, as long as such activity does not support military or paramilitary operations in Nicaragua by any foreign nations or other entity," at 14.

90. I5071.

91. See Vol. 131, No. 80, *Cong. Rec.*, H4143 (daily ed., June 12, 1985) (Statement of Rep. Boland).

92. Vol. 131, No. 80, *Cong. Rec.*, H4143 (daily ed., June 12, 1985); *see also* Vol. 131, No. 80, *Cong. Rec.*, H4131 (daily ed., June 12, 1985) (Statement of Rep. Bonior).

93. Vol. 131, No. 80, *Cong. Rec.*, H4144 (daily ed., June 12, 1985).

94. The Conference Report on the International Security and Development Cooperation Act of 1985 explained that this exception allowed "the sharing of intelligence informa-

tion with the democratic resistance." H. Rep. 99-237, at 144.

95. Vol. 131, No. 80, *Cong. Rec.*, H4145 (daily ed., June 12, 1985).

96. Q338.

97. Security and Development Assistance: Hearings Before the Sen. Comm. on Foreign Relations, 99th Cong., 1st Sess., at 908-10 (1985).

98. Department of Defense Appropriations for 1986: Hearings Before a Subcomm. of the House Comm. for Appropriations, 99th Cong., 1st Sess. 1091-92 (1985).

99. Memorandum for the General Counsel, 8/23/84, C415.

100. McFarlane Test., *Hearings*, 100-2, at 44-48; *id.*, at 127.

101. Ex. RCM 40B.

102. North Test., 7/9/87, at *Hearings*, 100-7, Part 1, at 271; *Id.*, 7/7/87, at 91; see e.g. O'Boyle Test., 5/21/87, at 100-3 at 118.

103. North Memo, 1/15/86 to McFarlane: Subj: "Nicaragua Options," N45025.

104. International Security and Development Cooperation Act of 1985; Conference Report 99-237 to accompany S. 960, 99th Cong., July 29, 1985, at 143.

105. International Security and Development Cooperation Act of 1985; Conference Report 99-237 to accompany S. 960, 99th Cong., July 29, 1985, at 143.

106. As early as December 11, 1984, Representative Addabbo had expressed concern over the possibility that foreign assistance funds were being redirected to the Contras. In a letter to Secretary Shultz, he wrote "I am concerned that countries receiving U.S. foreign assistance aid may be utilizing a portion of such aid to assist the Contras and, in doing so, effect a rather devious contravention of the law prohibiting such aid," N31162.

107. CIA document, Subj.: "Question for the Record regarding January 28 Covert Action Update Briefing," C5284-85.

108. Intelligence Oversight Board memorandum of Apr. 8, 1986, discussing the communications and advice provision of legislation concerning the Nicaraguan opposition, N33562. *See also* C924 (letters from Representative Hamilton and Senator Durenberger).

109. Vol. 131, No. 159, *Cong. Rec.*, H10294 (daily ed., Nov. 19, 1985) (emphasis added).

110. Vol. 132, No. 40, *Cong. Rec.* (daily record, Mar. 27, 1986). Senate floor debate and vote on S.J. Res. 283,

111. Vol. 132, No. 40, *Cong. Rec.* (daily record, Mar. 27, 1986). Kennedy Amendment No. 1716 to S.J. Res. 283 to prohibit any United States assistance to military and paramilitary groups operating in Nicaragua was rejected by a vote of 76 nays to 24 yeas. Similarly defeated was a second Kennedy Amendment, No. 1727, which sought to prevent the introduction of United States personnel into Nicaragua. A Cranston-Sasser amendment, No. 1722, calling for bilateral negotiations, also was rejected.,

112. Vol. 132, No. 88, *Cong. Rec.*, H4253 (daily ed., June 25, 1986).

113. Vol. 132, No. 88, *Cong. Rec.*, H4237 (daily ed., June 25, 1986).

114. Continuing Appropriations for Fiscal Year 1987, 99th Cong., P.L. 99-500, Section 201, Stat. 1783, 295-300, Oct. 18, 1986. *See also* discussion in Vol. 132, No. 88, *Cong. Rec.* (daily ed., June 25, 1986), House floor debate, H4253-80.

115. Poindexter Dep., 5/2/87, at 63.

116. Public Papers of the President: Ronald Reagan, 1983, at 541.

117. 299 U.S. 304, 319-20 (1936).

118. 453 U.S. 654 (1981).

119. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

120. 453 U.S. at 668-69 (emphasis supplied; quoting in part from Jackson, J., concurring in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. at 637-38).

Chapter 27
Rule of Law

> SIR THOMAS MORE: The law, Roper, the law. I know what's legal not what's right. And I'll stick to what's legal . . . .
>
> WILLIAM ROPER: So now you'd give the Devil benefit of law!
>
> MORE: Yes. What would you do? Cut a great road through the law to get after the Devil?
>
> ROPER: I'd cut down every law in England to do that!
>
> MORE: Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—Man's law, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then?
>
> —*A Man For All Seasons* by Robert Bolt

Too many laws were "cut down" in the Iran-Contra Affair by officials who, like Roper, decided that the laws inhibited pursuit of their goals.

This process began when members of the National Security Council staff decided "to take some risks" with the law, in John Poindexter's words, in order to continue support for the Contras. At the end, as Oliver North acknowledged, they were engaging in conduct such as lying to Congress that they knew was plainly "wrong."

The Committees were charged by their Houses with reporting violations of law[1] and "illegal" or "unethical" conduct,[2] and if the Committees are to be true to their mandates, they cannot hesitate to draw the inevitable conclusions from the conduct these officials displayed during this affair.

The judgments of these Committees are not the same as those required of the Independent Counsel. He must decide whether there was criminal intent behind any violation, whether there are any extenuating circumstances, and whether prosecution is in the public interest. The Committees express no opinions on these subjects and our comments in this section are purposefully general so as not to prejudice any individual's rights. Our focus is not on whether the technical and demanding requirements of criminal statutes have been met, but on whether the policy underlying such statutes has been frustrated. Moreover, the list of statutes implicated by the Iran-Contra Affair is not exhaustive.

Because of the importance of the Boland Amendment to this investigation, this Report considers the applicability of that Amendment to the NSC in a separate chapter. The only issue under the Boland Amendment that is addressed in this chapter is the legality of the diversion. The Boland Amendment aside, however, the Committees find that activities in the Iran-Contra Affair, including the diversion, were conducted and later covered up by members of the NSC staff in violation of the Constitution and of applicable laws and regulations.

Use of Donated Funds to Evade Congress' Power of the Purse

Overview

The Committees find that the scheme, taken as a whole, to raise money to conduct a secret Contra-support operation through an "off-the-shelf" covert capacity (the Enterprise) operating as an appendage of the NSC staff violated cardinal principles of the Constitution.

Several witnesses at the public hearings contended that the covert action to support the Contras did not violate the Boland Amendment because it was financed by contributions, not appropriated funds. The Boland Amendment by its terms, they maintained, only prevented the President from spending appropriated funds to support the Contras. But that ignores a greater principle. The Constitution contemplates that the Government will conduct its affairs only with funds appropriated by Congress. By resorting to funds not appropriated by Congress—indeed funds denied the executive branch by Congress—Administration officials committed a transgression far more basic than a violation of the Boland Amendment.

The power of the purse, which the Framers vested in Congress, has long been recognized as "the most important single curb in the Constitution on Presidential Power."[3] The Framers were determined not to combine the power of the purse and the power of the sword in the same branch of government. They were concerned that if the executive branch had both the power to raise and spend money, and control over the armed forces, it could unilaterally embroil the country in war without consent of Congress, notwithstanding Congress' exclusive power to declare war.

When members of the executive branch raised money from third countries and private citizens, took control over that money through the Enterprise, and used it to support the Contras' war in Nicaragua, they bypassed this crucial safeguard in the Constitution. As Secretary of State George Shultz testified at the public hearings: "You cannot spend funds that the Congress doesn't either authorize you to obtain or appropriate. That is what the Constitution says, and we have to stick to it."[4]

The Power of the Purse and the Constitution

Article I, Section 9, Clause 7 of the Constitution, the appropriations clause, provides:

> No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

The appropriations clause was intended to give Congress exclusive control of funds spent by the Government, and to give the democratically elected representatives of the people an absolute check on Executive action requiring expenditure of funds.

The Framers viewed Congress' exclusive power of the purse as intrinsic to the system of checks and balances that is the genius of the United States Constitution.

James Madison, the principal architect of the Constitution, explained:

> The House of Representatives alone can propose the supplies requisite for the support of government. They, in a word, hold the purse. . . . This power of the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.[5]

Col. George Mason, another Constitutional Convention delegate, stated, ". . . the purse and the sword ought never to get into the same hands, whether legislative or executive . . . ."[6]

This concept has been a guiding constitutional principle for 200 years. As President Reagan stated at an October 22, 1987, press conference: "The President of the United States cannot spend a nickel. Only Congress can authorize the spending of money."[7]

Congress' exclusive control over the expenditure of funds cannot legally be evaded through use of gifts or donations made to the executive branch. Were it otherwise, a President whose appropriation requests were rejected by Congress could raise money from private sources or third countries for armies, military actions, arms systems, and even domestic programs.

The Government may, of course, receive gifts.[8] However, consistent with Congress' constitutionally exclusive power of the purse, gifts like all other "miscellaneous receipts" must, by statute (31 U.S.C. Section 484) be placed directly into the Treasury of the United States,[9] and may be spent only pursuant to a Congressional appropriation.[10] *

The Constitutional process that lodges control of Government expenditures exclusively in Congress is further enforced by the Anti-Deficiency Act (31 U.S.C. Section 1341) which prohibits an officer of the United States from authorizing an expenditure that has not been the subject of a Congressional appropriation, or that exceeds the amount of any applicable appropriation. Thus it provides:

> An officer or employee of the United States Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or involve [the] government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.

Violations of the Anti-Deficiency Act are made crimes by 31 U.S.C. Section 1350. **

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*The significance of this proposition is explained in a major General Accounting Office publication on Appropriations Law, which serves as a guide for Government officials:

> Once money is deposited into a "miscellaneous receipts" account, it takes an appropriation to get it back out. *E.g.* 3 Comp. Gen. 296 (1923); 2 Comp. Gen. 599,600 (1923). Thus, the effect of 31 U.S.C. Section 484 is to ensure that the executive branch remains dependent on the Congressional appropriations process. . . [it] emerges as another element in the statutory pattern by which Congress retains control of the public purse under the separation of powers doctrine.

See 51 Comp. Gen. 506,507 (1972). (Principles of Federal Appropriations Law, United States General Accounting Office, Office of General Counsel, pp. 5–65).

**Use by the Executive of gifts to pay for programs not funded by Congress is also prohibited by the doctrine against augmentation of appropriations, which the GAO also explained:

> The prohibition against augmentation is a corollary of the separation-of-powers doctrine. . . . To permit an agency to operate beyond [its appropriation] with funds derived from some other source without specific congressional sanction would amount to a usurpation of the congressional prerogative. Restated, the objective of the theory against augmentation of appropriated funds is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity . . . .

(*Id.* at pp. 5-62.)

Use of the Enterprise to Mask the Fact that the U.S. Government Had Taken Control of the Donations

The constitutional scheme, which these laws amplify, is thus a simple one. Congress is dependent upon the executive branch to execute the law it passes; and the executive branch is dependent upon Congress to appropriate the funds to carry on its activities. This mutual dependence is at the heart of the system of checks and balances.

The Constitutional plan did not prohibit the President from urging other countries to give money directly to the Contras.[11] But the Constitution does prohibit receipt and expenditure of such funds by this Government absent an appropriation. This prohibition may not lawfully be evaded by use of a nominally private entity, if the private entity is in reality an arm of the Government and the Government is able to direct how the money is spent.

The law with respect to when a nominally private company is an arm of the Government such that expenditure of its funds is governed by rules applicable to expenditure of Government funds is summarized in *Motor Coach Industries, Inc.* v. *Dole,* 725 F.2d 958, 964-65 (4th Cir. 1984). There, the Court articulated a multifactor approach for resolving when an ostensibly private entity like a trust is a Federal entity:

> We must consider, at a minimum, the purposes for which the trust was established; the public or private character of the entity spearheading the trust's creation; the identity of the trust's beneficiary and administrators; the degree of control exercised by the public agency over disbursements and other details of administration; and the method by which the trust is funded.[12]

Lake Resources, the flagship of the Enterprise, was created by Richard Secord and Albert Hakim at North's request in July 1985. North did not like the way Contra leader Adolpho Calero was spending the donations received earlier, and he wanted more control over expenditures. By North's own admission, Lake Resources was to be an "off-the-shelf" company to conduct a "full service covert action" in support of the Contras and other governmental projects. North referred to it in his PROF messages to Poindexter as "our Lake Resources company."

North was responsible, directly or indirectly, for virtually all the income of Lake Resources and the other companies in the Enterprise, and he had the power to direct its expenditures. North instructed Secord to spend money for airplanes, an airstrip, and munitions for the Contras and Secord did. He instructed Secord to spend money on radios for a political party in a foreign country and Secord did. He instructed Secord to spend its money for a ship to conduct an intelligence operation and Secord did. He instructed Secord to spend cash in support of a Drug Enforcement Agency operation to free U.S. hostages and Secord did.

North had secure communication devices in his office and those of all principal operatives in the covert action. Using these devices, North was able to maintain control of the most minute details of the operation. On one occasion, he even instructed pilots on the coordinates to be used in a weapons drop to the Contras inside Nicaragua.

Lake Resources was created for the very purpose of conducting Government operations while evading the Congressional appropriations power. In describing Director of Central Intelligence William Casey's plan for an off-the-shelf covert capacity, North testified:

> Q: Do you remember giving testimony about the fact that Director Casey wanted something that he could pull off the shelf and that is why he was excited about the fact that you were now able to generate some surpluses that could be used?
>
> A: That is correct.
>
> Q: Why don't you give us a description of what he said, or as you understood it, what he meant by pulling something off the shelf?
>
> A: Director Casey had in mind, as I understood it, an overseas entity that was capable of conducting operations or activities of *assistance to U.S. foreign policy goals* that was a stand-alone.
>
> Q: Self-financed?
>
> A: That was self-financing, independent of appropriated monies and capable of conducting activities similar to the ones that we had conducted here.[13] (Emphasis added.)

The concept of an off-the-shelf covert company to conduct operations with funds not appropriated by Congress is contradictory to the Constitution. The decision to use the Enterprise to fight a war with unappropriated funds was a decision to combine the power of the purse and the power of the sword in one branch of government.

Referring to the concept of having independently financed entities conduct covert actions to avoid Congressional review, Secretary Shultz said: "This is not sharing power, this is not in line with what was agreed to in Philadelphia. This is a piece of junk and it ought to be treated that way."[14]

As former Secretary of State Henry Kissinger recently wrote with particular reference to the use of the proceeds of the Iranian arms sales:

> On the formal level the case is obvious. The Executive branch cannot be allowed—on any claim of national security—to circumvent the Congressional prerogative over appropriations by

raising its own funds through the sale of government property.[15]

Legal Advice

The President may have received support for use of third country funds from a decision at the June 1985 National Security Policy Group meeting, which he attended, to seek the advice of Attorney General William French Smith before any funds were obtained from third countries.

At that meeting, Secretary Shultz warned that solicitation of third-country funds that the Government could control might be an "impeachable offense," attributing this opinion to Chief of Staff James Baker. Casey disagreed and offered to obtain an opinion from Attorney General Smith.[16]

When Casey approached the Attorney General the following day, however, he drew the question narrowly, asking only whether Nicaragua's neighbors could be urged to help the Contras. The Committees have received evidence that Attorney General Smith gave an oral opinion that this would not be unlawful. As noted above, the Constitution does not prohibit a President from urging foreign countries and private citizens to give money to causes which the President supports, so long as this Government does not take control of the money.

But no representatives of the Justice Department were ever asked to express an opinion that it was constitutional for members of the executive branch to do what they did here—raise money from third countries and private parties, put the money in an entity controlled by the Executive, and direct its expenditure for projects of the executive branch. Nor did any legal officer of the Government ever suggest that it was lawful or constitutional to divert proceeds from the sale of U.S. property for purposes forbidden by the Congress.

The oral, on-the-spot advice of Attorney General Smith to Casey that Central American countries could be approached may in the transmission have been given a broader interpretation. The Committees simply do not know. But the Iran-Contra Affair cannot stand as a precedent for bypassing the constitutional requirement for appropriations. Securing funds, without Congressional authorization, to fund Government programs run by Government officials, is a direct violation of the Constitution that cannot be condoned.

Section 501 of the National Security Act and Related Regulation

The Committees find that the failure to notify the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence of the covert action to support the Contras violated the Congressional notice provisions of Section 501 of the National Security Act; and that the delay in notifying Congress of the Iran arms sales abused whatever flexibility Congress built into the statute.

Section 501 of the National Security Act requires that Congress be notified of all covert actions conducted by any agency of Government. The statute provides:

> The Director of Central Intelligence *and the heads of all departments, agencies and other entities of the United States involved in intelligence activities* shall:
>
> (1) keep the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the "Intelligence Committee") fully and currently informed of all intelligence activities *which are the responsibility of, are engaged in by or are carried out for or on behalf of any department, agency, or entity of the United States,* including any significant anticipated intelligence activity. (Emphasis added.)

There are only two exceptions or qualifications to the requirement of prior notice. First, the relevant head of a department, in lieu of notifying both Intelligence Committees, may notify the two ranking Members of each Intelligence Committee, and the two ranking Members of each House of Congress. This requires a personal decision by the President of the United States.

Second, the Act recognizes that there are circumstances under which the President may not have provided any prior notice to Congress. In such a case, he must "fully inform the Intelligence Committees in a timely fashion" with a "statement of the reasons for not giving prior notice." This also requires a personal decision by the President.[17]

The notification provision of Section 501 serves vital purposes for both Congress and the executive branch. First, the required notification allows for beneficial congressional input in decisions that may affect important national interests. As former Director of Central Intellience William E. Colby said during consideration of the Act, discussion with Congressional officials of planned covert actions "enables the Executive to get a sense of Congressional reaction and avoid the rather clamorous repudiation which has occurred in certain cases. . . . I think that is a helpful device."[18]

Second, notification enables Congress to fulfill its constitutionally mandated role of monitoring Executive actions in the area of national defense and foreign policy lest covert actions entangle the country in overt hostilities. As a mechanism for consultation between the executive and legislative branches, notification helps to address the anomaly of formulating plans for secret action within a democracy.

The language of Section 501, as well as its legislative history, was the product of a delicate compromise between Congress and the executive branch. The purpose of the compromise was to avoid a confrontation with President Carter, who maintained there might be situations in which he should not be required to give prior notice, and that a statute requiring such disclosure in every case would interfere with his constitutional responsibilities. After lengthy consultation with the Administration, the statute was crafted so as to permit the Congress and the President to continue to disagree. This was done by the inclusion of a preamble that states that the notice requirements apply "to the extent consistent with all applicable authorities and duties, including those conferred upon the executive and legislative branches of the Government," and by recognizing that there might be circumstances where prior notice is not given.

Deferral of notice was intended to be the exception, not the rule. For example, Senator Dee Huddleston, the lead sponsor of the bill, stated:

> I myself believe that the only constitutional basis for the President to withhold prior notice of a significant intelligence activity would be exigent circumstances when time does not permit prior notice; in such a case the committee could be notified as soon as possible.[19]

Similarly, Senator Daniel Inouye said during consideration of the Conference Report on the Intelligence Oversight Act:

> I am of the firm belief that the only time the President has the constitutional authority to withhold prior notice to the intelligence committees would be in matters of extreme exigency. In my experience as chairman of the Intelligence Committee and as a continuing member of that committee, and after 4 years of reviewing the covert operations of our intelligence system, I cannot conceive of any circumstance which would require the withholding of prior notice except where the nation is under attack and the President has no time to consult with Congress before responding to save the country.[20]

The Administration's conduct in the Iran-Contra Affair was inconsistent with these standards.

The Contra Covert Operation

Under Section 501, the President alone can make a determination to delay notice of a covert operation. The President did not make a personal determination that notice of the NSC staff's Contra support activity should either be delayed or limited. Indeed, he has publicly disclaimed knowledge of the covert action. Thus, prior notice to Congress of the covert action by the NSC staff was required.

No notice of any kind was ever sent to Congress concerning the Contra covert action conducted by the NSC staff. On the contrary, the NSC staff took every step to keep Congress from discovering its activities. The covert action was carried out in violation of the Congressional notice provisions of the National Security Act.

The Iranian Arms Sales

The President did know of the Iran arms sales, and he made a deliberate decision not to notify Congress. Thus, Congress did not learn of direct arms sales to Iran, approved by the Finding of January 17, 1986, until the press reported it in November 1986. Congress did not learn of the December 5, 1985, Finding approving U.S. participation in the Israeli shipments until Poindexter's testimony was compelled under a grant of immunity. As a consequence of the President's decisions not to notify Congress, the operation continued for over a year through failure after failure, and when Congress finally did learn, it was not through notification by the Administration, but from a story published in a Beirut weekly.

The flexibility afforded the President for providing notice to Congress was abused by this delay. The reason cited for not notifying Congress was not that there was insufficient time to notify Congress—the only reason recognized in the legislative history justifying absence of prior notice—but that leaks might result and could endanger the hostages. There was no evidence to support such a rationale. The hostages had value to their holders only while they were alive.[21] The Intelligence Committees frequently are entrusted with information about covert operations in which disclosure would put American lives at risk. Moreover, the information the Administration withheld from Congress was given at various times to an Iranian intermediary who failed several CIA lie detector tests, officials of the Government of Iran, officials of the Government of Israel, officials of the Government of a European country, private Israeli businessmen, and private U.S. citizens who did not have security clearances, such as Hakim.

It is a fair conclusion, therefore, that the Administration chose not to notify Congress of the arms-for-hostages initiative precisely because it anticipated Congress' objections and knew that the Secretaries of State and Defense would not defend the initiative. Indeed, the Iran initiative was contrary to longstanding national policies and to common sense, and the Administration might have abandoned the plan rather than disclose it to Congress.

All covert actions can be supported by strong arguments for secrecy. If the Administration can use these arguments as reasons to withhold notice where its plans are most suspect, Section 501 of the National

Security Act is all but nullified. It is precisely when a covert action is suspect and potentially embarrassing that Congressional notice is most important. It is also then that the Administration is most in need of independent evaluations and criticism of proposed policies. And it is then when Congress, the representative of the people, must be given at least the opportunity to be heard in secret before action that could be calamitous for the Nation is carried out.

The DEA Hostage Rescue Operation

In 1985 and 1986, the NSC used DEA agents to conduct a covert operation designed to free the hostages. The details of this operation are described in Chapter 23 of this Report. Congress must be notified of such operations under Section 501 of the National Security Act.

No notice of any kind was provided to Congress about this operation, and no decision was ever made by the President that prior notice should be withheld or delayed. Thus, failure to notify Congress of the DEA covert operation violated the law.

Executive Order 12333, and NSDD 159

The procedures applicable to covert actions are governed not only by statutes, but by executive orders and National Security Decision Directives (NSDDs). These are written regulations signed by the President of the United States, and are binding on the entire executive branch until they are rescinded or changed by the President. They, too, were violated.

Executive Order 12333 issued by the President provides that "no agency except the CIA . . . may conduct any special activity (elsewhere defined to include covert actions overseas) unless the President determines that another agency is more likely to achieve a particular objective."

There was no Presidential determination that the NSC staff should conduct the Contra covert operation, and thus the NSC staff's covert action in support of the Contras violated the President's executive order.

Similarly, National Security Decision Directive 159, promulgated by the President, provides that no covert action overseas may be conducted by any agency of Government unless it is authorized by a written Finding signed by the President.

There was no written Finding signed by the President approving the covert action by the NSC staff in support of the Contras. Thus the NSC staff's activity violated this directive.

Violations of 18 U.S.C. Section 1001

We have described elsewhere (Part IV) the elaborate efforts by Government officials to conceal their Contra-support activities from Congress.

It is enough to say here that, among other things, Congress was told by an Administration official orally and in writing in 1985 that the NSC staff was not engaged in fundraising or arranging military support for the Contras. Congress was personally told by North in 1986 that he was not engaged in fundraising or giving military advice to the Contras. Congress was told in testimony by Administration officials in October 1986 that the Government had no connection to the plane carrying Eugene Hasenfus. And Congress was told in testimony by Administration officials in October, November, and December 1986 that the Administration was not involved in raising funds for the Contras from foreign countries, including specifically funds from Country 2.

These statements were all untrue. They were made by officials who had varying degrees of knowledge about the facts they discussed. Some of the statements may have been unintentionally misleading and made by officials who were themselves deceived; others were outright falsehoods.

Most of these statements were not under oath. But for the branches to operate in a cooperative relationship, Congress must be able to rely on statements even if unsworn. Congress and the executive branch are partners, not adversaries.

The law recognizes this, and the false statement statute, 18 U.S.C. 1001, provides felony criminal penalties for knowingly false, fictitious, and fraudulent statements to Congress,[22] even if not made under oath.[23]

Some officials claimed they were forced to choose between making false statements and revealing information they believed should remain secret. Government officials may claim any valid privilege including executive privilege, as a basis for refusing to answer questions or provide documents, and thus set in motion procedures for lawfully resolving the claim. But under the U.S. legal system, public officials do not have the option of making false statements to Congress.[24]

The Diversion—Boland Amendment

The Committees find that the diversion of arms sales proceeds to the Contras' war effort was an evasion of the Boland Amendment no matter how narrowly that noncriminal statute is construed.

The Boland Amendment provides that "no funds *available to* the Central Intelligence Agency, the Department of Defense, or any other agency or entity involved in intelligence activities" may be spent for military support of the Contras. (Emphasis added.)

The missiles that were sold to Iran in 1986 came from Department of Defense stocks. The missiles had been purchased with money appropriated for the Department of Defense by Congress, and the missiles belonged to the Department of Defense. The Department of Defense sold the missiles to the Central Intelligence Agency, and the Central Intelligence Agency sold the missiles to Iran.

The memorandum to the President dated January 17, 1986, outlining the arms sales the President approved that day spells this out very clearly. It states that the CIA would purchase the missiles from DOD and would sell the missiles "directly" to Iran, using an "agent"—i.e., the various Enterprise companies—to handle the actual transactions.

Iran paid $28.5 million for those weapons. In the ordinary course, the purchase price is paid to the seller, i.e., the CIA. In this case, however, National Security Adviser Poindexter decided, on North's recommendation, that only a portion of the money should go to the CIA, with the rest remaining in the custody of Secord's companies before being used to support the Contras. Thus, Poindexter testified:

> Q: Who decided how that money would be used?
>
> A: The—my guidance to Colonel North what he requested and I approved, was that those funds should be used for support of the contras in Central America so they could keep pressure on the Sandinistas.
>
> Q: So the decision—and I think you said earlier in your testimony, "the buck stops here"—the decision as to how that money was to be used was made by you?
>
> A: Was my decision; that is correct.[25]

Poindexter could also have decided that all of the purchase price be remitted to the CIA. North testified as follows:

> Q: The question was, if those higher-ups in the U.S. Government from whom you sought approval decided that the $10 million [residue] should not, any part of it, be sent to the contras but should all come back to the U.S. Treasury, that is what would have happened isn't it?
>
> A: Yes.[26]

Given the Enterprise's status as an agent, and the NSC staff's control over the pricing and the proceeds of the arms sales, the full purchase price was available to the CIA. These funds, generated from the sale of U.S. weapons, could no more be diverted to the Contras than the weapons themselves.

Proceeds of Arms Sales—Funds of the United States

The Committees find that the full proceeds of the arms sales to Iran belong to the U.S. Government. Consequently, these funds are governed by statutes applicable to Government funds, including statutes prohibiting conversion of U.S. Government funds to unauthorized purposes.

As already noted in the previous section, Secord's Enterprise received the purchase price for the missiles in its capacity as agent for the United States. This conclusion is strongly supported by the documentary and testimonial evidence. The President approved the arms sales based on the January 17, 1986, memorandum, which states that the purchase price "would be transferred to an agent of the CIA," and that the CIA would "deliver the weapons to Iran through the agent." That memorandum is consistent on this point with other documents in the Committees' possession.* Moreover, as noted above, the Enterprise conducted itself in a manner consistent with its status as an agent of the United States, spending money for Government purposes—for the Contras, for a foreign country, for a ship, and for a DEA operation—all at the direction of Government officials.[27] The Enterprise's profits from the Iran arms sales were not the result of entrepeneurial risks or skills. The Government determined the price which the Enterprise paid for the missiles and approved and negotiated the price at which the missiles were sold to Iran.

Government funds include not only funds in the physical possession of the Government, but funds that, although in the possession of another, are under the Government's control.[28] When an agent of the Government collects money owed to the Government by a customer of the Government, the money belongs to the Government and cannot be converted to some other use. *Arbuckle* v. *United States*, 146 F.2d 657 (D.C. Cir. 1944).

The chief legal officer of the United States appears to be in agreement with the Committees on this point. The Attorney General of the United States took the position in an official request for assistance to the Central Authority of Switzerland, dated December 12, 1986, that the full proceeds of the arms sales were funds of the United States; and gave similar testimony to these Committees. Thus, referring to these funds he said: "I would say that as a general matter, it is highly probable that those funds should be on a constructive trust theory or agency theory the property of the United States."[29]

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* Other memorandums confirm the Enterprise's role as agent in the Iran arms sales. The proposal to sell missiles directly to Iran first appeared in a December 9, 1985, memorandum from North to Poindexter, suggesting "using Secord as our conduit." A memorandum by CIA General Counsel Stanley Sporkin dated January 15, 1986, makes three separate references to an "agent" who would supply the weapons to Iran and "act as a middleman with our authority." And the January 17, 1986, Memorandum to the President makes the final proposal to have the CIA transfer the weapons "directly" to Iran "using an authorized agent as necessary."

Government funds coming into the hands of an officer or agent of the United States must be paid immediately into the Treasury (31 U.S.C. Sections 484, 3302) and may not be applied to some other use (18 U.S.C. Section 641). Consequently, it is the Committees' judgment that all funds derived from the proceeds of the sale of arms to Iran currently in the custody of the Enterprise or its representatives belong to the United States and by law should be returned to the United States Treasury forthwith.

Iran Arms Sales: Arms Export Control Act

The Committees find that the Administration's approval of the transfer of weapons to Iran by Israel violated the Arms Export Control Act (AECA).[30]

All the HAWKs and TOWs that Israel transferred to Iran in 1985 had earlier been obtained from the United States under the AECA. Agreements between this country and Israel prohibited Israel from transferring the arms to any third country without first obtaining written consent of the United States.[31]

Under the AECA, the President may not provide that consent unless: (1) the United States itself would transfer those arms to that country; (2) the transferee country (here Iran) agrees in writing that it will not further transfer the items without obtaining the consent of the President; and (3) the President notifies Congress of the transfer (22 U.S.C. Section 2753(a)).[32]

The President's authorization of the 1985 Israeli transfers to Iran were made without even a pretense of compliance with the AECA or Israel's written agreements with the United States. No written consent was sought or given; and even if Israel had sought a written consent, this Government could not have given it without changing its own regulations. This is so because Iran, which was considered a terrorist nation by the United States and which was the subject of a U.S. arms embargo, was not eligible for direct sales.[33] No written Iranian retransfer assurances were obtained nor could they have been. Finally, no notice was given to Congress.

In 1985, the Secretary of Defense stated vigorously to the President that he believed the sales were illegal. He restated his belief before these Committees in 1987:

> A: But my feeling about that was, as I've mentioned to you earlier, that the Export Control Act doesn't permit a blanket approval in advance or anything of that kind and does not permit exports, did not permit exports to Iran, neither that Act nor some others, and did not permit the Israelis to export anything we hadn't specifically authorized.
>
> Q: So if Israel had earlier purchased arms from the United States under the Arms Export Control Act and not pursuant to an intelligence activity, your position was that the law forbade them to transfer them to any third country without going through varius kinds of waivers and reporting requirements?
>
> A: Yes. Right.[34]

Later he testified:

> Q: So it would have been—you're saying it would have been a violation of law for Israel to have—?
>
> A: I don't know of anything that would have taken it out of the normal course. I haven't researched the problem and had a legal opinion on it. My view is that our Arms Export Control Act would make that kind of transaction illegal, yes. That is just my own conclusion.[35]

The Administration takes the position that the CIA may transfer weapons as part of an intelligence operation, outside the context of the AECA, by using the President's powers under the National Security Act. That is the approach the President used in 1986 regarding his January 17, 1986, Finding. However, no such Finding existed for the sale of 504 TOWs; only a retroactive Finding existed for the November 1985 HAWKs sale; and the weapons transferred by Israel to Iran were governed by the AECA having been earlier transferred to Israel pursuant to that Act.[36]

The Department of Justice, in a legal opinion on December 17, 1986, concluded that the 1985 Israeli shipments did not violate the AECA.[37] In reaching this conclusion, the opinion assumed that Israel was acting solely as a "conduit" in a direct sale by the United States to Iran; that the United States promptly replenished all Israeli weapons with identical weapons; that the Israelis had no financial interest in the transaction; and that the United States asked Israel to engage in these transfers as an accommodation to the United States.[38] The opinion also recognized that its conclusion depended on the correctness of these assumptions.

The assumptions are, in fact, incorrect. It was the Israelis who first suggested and engaged in the arms sales. Israel was more than a conduit. The initiative was considered a joint venture by the United States and Israel; Israel ended with newer TOWs than it started with; and the prolonged negotiations over replenishment reveal the financial interest Israel had in the transaction. Since its assumptions were incorrect, the legal conclusion of the Department of Justice opinion must be discounted. Moreover, even if the assumptions were correct, it is not clear that the Department of Justice legal opinion is correct.

Violation of 18 U.S.C. Section 1505 and the Presidential Records Act

The destruction or alteration of documents[39] or the giving of false testimony[40] to frustrate a Congressional inquiry is a felony if done with "corrupt" intent—i.e., the purpose of impeding an inquiry (18 U.S.C. Section 1505).[41]

Even if a subpoena has not been issued, an individual on notice of a planned Congressional inquiry cannot lawfully alter or destroy documents for the purpose of preventing Congress from developing the facts if he knows such documents may be subpoenaed or requested. E.g., see *United States* v. *Vesich*, 724 F.2d 471 (5th Cir. 1984); *United States* v. *Tallant*, 407 F.Supp. 878, 888 (N.D. Ga. 1975).

Starting at least as early as November 10, 1986, the Administration was put on notice that various Congressional committees planned inquiries into the sale of arms to Iran. Both the House and Senate Intelligence Committees told the White House of the inquiries and arranged for Poindexter and Casey to appear before them on Friday, November 21, 1986. Thereafter, several Administration officials took actions which had the effect of concealing this Government's participation in the Israeli shipments that violated the Arms Export Control Act.

On November 18, 1986, 3 days before the scheduled appearance of Casey and Poindexter, Presidential aides began to focus on the legal problems attending U.S. involvement in the Israeli shipments made prior to the January 17, 1986, Finding. Then during the next 3 days, several Administration officials involved in the pre-Finding shipments told conforming stories denying U.S. involvement in these shipments, at times using a false cover story that the United States had been told that the Israelis were shipping oil-drilling equipment, not arms. These officials wrote this false cover story into NSC chronologies; they told the false cover story in one version or another to Congress and to the Attorney General; and they destroyed documents that would have revealed the truth.

The full facts concerning this effort, in the face of imminent Congressional probes, to alter the historical record, are described in Part IV. Whether or not any of the individuals had the requisite criminal intent to violate 18 U.S.C. Section 1505, their conduct violated the very thrust of that law—to ensure that Congress' access to the truth would not be obstructed.

Iran: The Presidential Records Act

Government employees do not have the discretion to destroy or alter embarrassing or incriminating documents. The Presidential Records Act was enacted after Watergate for the very purpose of ensuring that official records would be preserved. The Act has no criminal penalties but it was willfully violated by Poindexter in destroying the December 1985 Finding.

Conclusion

Article II, Section 3 of the Constitution directs that the President "shall take care that the laws be faithfully executed." [42] The "take care" clause was derived from the English Bill of Rights, which forbade the King from suspending laws that he did not like. As Justice Jackson stated, the "take care" clause signifies "that ours is a government of laws, not of men." [43]

The "take care" clause embodies the principle of accountability. As Gouverneur Morris, one of the Constitutional Convention delegates, stated, the Framers were quite cognizant that "without . . . ministers the Executive can do nothing of consequence."[44] At the same time, however, they understood that a government of the people could not function unless the elected chief executive was responsible for the actions of his appointed subordinates. In 1789, Madison wrote that "[N]o principle is more clearly laid down in the Constitution, than that of responsibility."[45] The "take care" clause so unpretentious in its wording, made accountability compatible with delegation. Although they recognized that executive power must be exercised by subordinate departments, the Framers nevertheless required the President to superintend the actions of those departments, thus correcting the tendency of "plurality in the executive . . . to conceal faults and destroy responsibility." [46]

The President's responsibility to supervise his appointees was vigorously debated in the first session of Congress when the President's power to remove Cabinet officers was questioned. Many of the members had been delegates to the Constitutional convention or the ratifying conventions, and they had firsthand knowledge of the Framers' intent. One Member of Congress, Fisher Ames, stated, "The executive powers are delegated to the President with a view to have a responsible officer to superintend, control, inspect, and check the officers necessarily employed in administering the laws."[47] "If anything in its nature" is executive, James Madison explained, "it must be that power which is employed in superintending and seeing that the laws are faithfully executed." Representative Lee answered his own rhetorical question, "Is not the President responsible for the Administration? He certainly is."[48]

In modern government, with its hundreds of thousands of employees, a President obviously cannot personally supervise the acts of all who act in his name. But if the "take care" clause has any vitality, it invests in a President the responsibility for cultivating a respect for the Constitution and the law by his staff and closest associates. When the President's National Security Adviser, who had daily contact with the President, can assume that he is carrying out the President's wishes and policy in authorizing the diversion; when NSC staff members believe that the destruction of official documents is appropriate and the deception of Congress is proper; and when laws like the Boland Amendment can be treated as if they do not exist, then clearly there has been a failure in the leadership and supervision that the "take care" clause contemplated.

Chapter 27

1. H. Res. 12 at 3.
2. S. Res. 23 at 3.
3. Corwin, *The Constitution and What It Means Today,* 101 (13th ed., 1975).
4. Shultz Test., *Hearings*, 100-9, at 254.
5. Federalist 58.
6. Madison's Notes of the Constitutional Convention, Ohio University Press, 1966 at p. 81.
7. New York Times, "Televised Press Conference," 10/22/87, p. 8.
8. See, *e.g., United States* v. *Burnison,* 339 U.S. 87, 90 (1950).
9. See 31 U.S.C. section 484 (known as the Miscellaneous Receipts Statute).
10. Principles of Federal Appropriations Law, United States General Accounting Office, Office of General Counsel, at 5-65.
11. The Administration received precisely that advice. At the June 1985 NSPG meeting, Secretary Shultz warned that the United States could not receive money from third countries and spend it for the Contras and that to do so might be an "impeachable offense," attributing this opinion to Chief of Staff James Baker. Casey said that they could ask the third countries to give directly to the Contras and sought the opinion of Attorney General Smith, who gave oral advice that it was lawful for the President to urge Nicaragua's neighbors to help the Contras. The Attorney General was not asked, and expressed no opinion, that it was constitutional for the NSC staff to raise money for the Contras which they would control directly or indirectly.
12. 725 F.2d at 965.
13. North Test., *Hearings*, 100-7, Part I, at 314.
14. Shultz Test., *Hearings*, 100-9, at 255.
15. The Washington Post, 7/28/87, p. 15.
16. The minutes of the NSPG meeting, attended by the President, reflect Shultz's warning. North's notes also indicate he was told that fundraising might be considered an impeachable offense and that the opinion of the Attorney General was going to be sought.
17. National Security Act Section 501.
18. *Id.*; 126 Cong. Rec. 13095 (1980) (Statement of Sen. Huddleston, quoting statement of former Director Colby).
19. 126 Cong. Rec. 13096 (1980).
20. 6/3/80 at 13105; Ex. EM-11, *Hearings*, 100-9.
21. In fact, public disclosure did not result in any loss of life of which the Committees are aware.
22. The Supreme Court has held that Section 1001 applies to false statements made to Congress, just as it applies to false statements made to other parts of the Government. *United States* v. *Bramblett,* 348 U.S. 503 (1955).
23. Attorney General Meese acknowledged that 18 U.S.C. Section 1001 applies to statements made to Congress whether or not under oath, and that there is no exception for NSC employees. Meese Test., *Hearings*, 100-9, at 68-69, 149.
24. For the reasons set forth below a violation of 18 U.S.C. Section 1001 may also constitute an obstruction of a Congressional proceeding and violate 18 U.S.C. Section 1505.
25. Poindexter Test., *Hearings*, 100-8, at 150.
26. North Test., *Hearings*, 100-7, Part I, at 115.
27. Secord denied he was acting as an agent of the Government. He testified that he was independent and could have sold the missiles to some other country and spent the money as he wished. Secord Test., *Hearings*, 100-1, at 132. This testimony was largely contradicted by Hakim, the documentary record, the conduct of the parties, and commonsense. The Committees do not find Secord's testimony to be credible.
28. It is a basic legal principle that Government funds include funds over which the Government exercises control. E.g., *Motor Coach Industries* v. *Dole,* 725 F.2d 958, 964-65 (4th Cir. 1984); *United States* v. *Bailey,* 734 F.2d 296, 300 (7th Cir. 1984); *United States* v. *Mitchell,* 625 F.2d 158, 160-61 (7th Cir. 1980); *United States* v. *McIntosh,* 655 F.2d 80, 83-84 (5th Cir. 1981); *United States* v. *Evans,* 572 F.2d 455, 471-72 (5th Cir. 1978); see also *United States* v. *Benefield,* 721 F.2d 128, 129 (4th Cir. 1983); *United States* v. *Canales,* 596 F.2d 662, 664 (5th Cir. 1974); *United States* v. *Banneda,* 607 F.Supp. 419 (N.D. Ind. 1985); *United States* v. *Johnson,* 596 F.2d 842, 846 (9th Cir. 1979).
29. Meese Test., *Hearings*, 100-9, at 113. See also Meese Test., *Hearings*, 100-9, at 65.
30. 22 U.S.C. Section 2751 *et seq.*
31. See 22 U.S.C. Sections 2314(a), 2753(a)(2).
32. See analogous provisions of the Foreign Assistance Act: 22 U.S.C. Section 2311 *et. seq.,* at 2314(a) and (e), applicable to weapons initially sold under the Act.
33. See Gaffney Test., *Hearings*, 100-6, at 61-62. The provision that would have prohibited sales to Iran may be waived by the President, but not without a separate notification to both Houses of Congress.
34. Weinberger Dep., 6/17/87 at 62.
35. Weinberger Dep., 6/17/87 at 29; Similar testimony was given to the Committees by other DOD witnesses experienced in AECA transfers.
36. See Opinion of Jerome Silber, General Counsel to Defense Security Assistance Agency, dated January 21, 1987.
37. The Committees have been given access to a legal opinion ("Opinion") written by Charles Cooper, Assistant Attorney General, Office of Legal Counsel, Department of Justice. (See Ex. EM-69, pp. 14-17, *Hearings*, 100-9.)
38. See Opinion written by Charles Cooper at 16.
39. *E.g., United States* v. *Presser,* 187 F.Supp. 64 (N.D. Ohio 1960), aff'd 292 F.2d 171 (6th Cir. 1961), aff'd by an evenly divided court, 371 U.S. 71 (1962).
40. *E.g., United States* v. *Lavelle,* 751 F.2d 1266 (D.C. Cir. 1985). The giving of false testimony may also violate 18 U.S.C. Section 1621 (perjury) and 18 U.S.C. Section 1001 (false statements not under oath).
41. *U.S.* v. *Langella,* 776 F.2d 1078 (2d Cir. 1985).
42. W. Crosskey, *Politics and the Constitution,* 434 (1953); Stewart, The Trial of the Seven Bishops, 55 Col. St. B. J. 70 (1980).
43. *Youngstown Sheet and Tube Co.* v. *Sawyer,* 343 U.S. 579 at 646 (1952).
44. W. Benton, *1787 Drafting the U.S. Constitution,* Vol. 2 at p. 1240 (1986).
45. 1 Annals of Congress at 480.
46. The Federalist 70 (A. Hamilton).
47. 1 Annals of Congress 495.
48. *Id.* at 544.

Chapter 28

Recommendations

It is the conclusion of these Committees that the Iran-Contra Affair resulted from the failure of individuals to observe the law, not from deficiencies in existing law or in our system of governance. This is an important lesson to be learned from these investigations because it points to the fundamental soundness of our constitutional processes.

Thus, the principal recommendations emerging from the investigation are not for new laws but for a renewal of the commitment to constitutional government and sound processes of decisionmaking.

The President must "take care" that the laws be faithfully executed. This is both a moral and legal responsibility.

Government officials must observe the law, even when they disagree with it.

Decisionmaking processes in foreign policy matters, including covert action, must provide for careful consideration of all options and their consequences. Opposing views must be weighed, not ignored. Unsound processes, in which participants cannot even agree on what was decided (as in the case of the initial Iranian arms sale) produce unsound decisions.

Congress' role in foreign policy must be recognized, not dismissed, if the benefit of its counsel is to be realized and if public support is to be secured and maintained.

The Administration must not lie to Congress about what it is doing. Congress is the partner, not the adversary of the executive branch, in the formulation of policy.

Excessive secrecy in the making of important policy decisions is profoundly antidemocratic and rarely promotes sound policy decisions.

These recommendations are not remarkable. They embody the principles on which this country's success has been based for 200 years. What is remarkable is that they were violated so freely and so repeatedly in the Iran-Contra Affair.

Congress cannot legislate good judgment, honesty, or fidelity to law. But there are some changes in law, particularly relating to oversight of covert operations, that would make our processes function better in the future. They are set forth below:

1. Findings: Timely Notice

The Committees recommend that Section 501 of the National Security Act be amended to require that Congress be notified prior to the commencement of a covert action except in certain rare instances and in no event later than 48 hours after a Finding is approved. This recommendation is designed to assure timely notification to Congress of covert operations.

Congress was never notified of the Iranian arms sales, in spite of the existence of a statute requiring prior notice to Congress of all covert actions, or, in rare situations, notice "in a timely fashion." The Administration has reasoned that the risks of leaks justified delaying notice to Congress until after the covert action was over, and claims that notice after the action is over constitutes notice "in a timely fashion." This reasoning defeats the purpose of the law.

2. Written Findings

The Committees recommend legislation requiring that all covert action Findings be in writing and personally signed by the President. Similarly, the Committees recommend legislation that requires that the Finding be signed prior to the commencement of the covert action, unless the press of time prevents it, in which case it must be signed within 48 hours of approval by the President.

The legislation should prohibit retroactive Findings. The legal concept of ratification, which commonly arises in commercial law, is inconsistent with the rationale of Findings, which is to require Presidential approval before any covert action is initiated.

The existing law does not require explicitly that a Presidential Finding approving a covert operation be in writing, although executive orders signed by both Presidents Carter and Reagan required that they be in writing. Despite this requirement, a PROF note by McFarlane suggested that the initial arms sales to Iran were approved by a "mental finding," and there is conflicting testimony about whether certain actions were orally approved by the President. The requirement of a written Finding will remove such uncertainties in the future.

3. Disclosure of Written Findings to Congress

The Committees recommend legislation requiring that copies of all signed written Findings be sent to the Congressional Intelligence Committees.

Since existing law does not require that covert action Findings be in writing, there currently is no requirement that written Findings be disclosed to Congress. The existing practice has been not to provide the Intelligence Committees with a signed written Finding.

4. Findings: Agencies Covered

The Committees recommend that a Finding by the President should be required before a covert action is commenced by any department, agency, or entity of the United States Government regardless of what source of funds is used.

The existing statutes require a Presidential Finding before a covert action is conducted only if the covert action uses appropriated funds and is conducted by the Central Intelligence Agency (CIA). By executive order and National Security Decision Directive (NSDD), Presidential Findings are required before covert actions may be conducted by any agency. Nonetheless, both the National Security Council (NSC) and the Drug Enforcement Administration (DEA) became engaged in covert actions without Presidential Findings fully authorizing their involvement.

The executive order requirement is sound. In the Committees' judgment, Presidential Findings for covert actions conducted by any agency should be required by law. Experience suggests that Presidential accountability, as mandated by the Finding requirement, is equally as important in the case of covert actions conducted by agencies other than the CIA.

The Committees also believe the Finding requirement should apply regardless of the source of funding for the covert action.

5. Findings: Identifying Participants

The Committees recommend legislation requiring that each Finding should specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any way in any covert action and whether any third party, including any foreign country, will be used in carrying out or providing funds for the covert action. The Congress should be informed of the identities of such third parties in an appropriate fashion.

Current law does not require a Finding to state what agencies, third parties, or countries will be utilized in conducting a covert action. The Iran-Contra investigation demonstrates that disclosure of what U.S. agencies (such as the NSC), private parties, or foreign countries will be engaged in covert actions are matters of considerable importance if Congress is to fulfill its oversight responsibilities adequately.

The record of the Iran-Contra investigation reflects repeated efforts by the executive branch to obtain funds from third countries for covert operations and for other causes the Administration supports.

These actions raise concerns of two kinds. First, there is a risk that foreign countries will expect something in return. Second, in an extreme case such as that presented by the record of these hearings, the use of third country or private funds threatens to circumvent Congress' exclusive power of the purse.

6. Findings: The Attorney General

The Committees recommend that the Attorney General be provided with a copy of all proposed Findings for purposes of legal review.

The first Iranian arms Finding of December 5, 1985, was not reviewed by the Attorney General. The Attorney General did give oral advice on the January 17 Finding but did not do the analysis or research that a written opinion would have entailed. The President, the intelligence community, and Congress are entitled to a review by the country's chief legal officer to ensure that planned covert operations are lawful.

7. Findings: Presidential Reporting

The Committees recommend that consistent with the concepts of accountability inherent in the Finding process, the obligtion to report covert action Findings should be placed on the President.

Under current law, it is the head of the intelligence entity involved which has the obligation to report to Congress on covert action. Yet policy choices are inherently part of the Findings process and it is the President who must authorize covert operations through the signing of Findings.

8. Recertification of Findings

The Committees recommend that each Finding shall cease to be operative after one year unless the President certifies that the Finding is still in the national interest. The executive branch and the Intelligence Committees should conduct frequent periodic reviews of all covert operations.

9. Covert Actions Carried Out by Other Countries

The Committees believe that the definition of covert action should be changed so that it includes a request by an agency of the United Sttes to a foreign country or a private citizen to conduct a covert action on behalf of the United States.

10. Reporting Covert Arms Transfers

The Committees recommend that the law regulating the reporting of covert arms transfers be changed to require notice to Congress on any covert shipment of arms where the transfer is valued at more than $1 million.

Under current law, the Administration must report covert arms transfers involving any single item valued at more than $1 million. Since a TOW or a HAWK missile is individually worth less than $1 million, this reporting requirement did not apply to the Iranian arms sales even though two shipments involved $10 million in arms or more. It is the value of a transfer, not the value of each component of a transfer, that matters.

11. NSC Operational Activities

The Committees recommend that the members and staff of the NSC not engage in covert actions.

By statute the NSC was created to provide advice to the President on national security matters. But there is no express statutory prohibition on the NSC engaging in operational intelligence activities.

12. NSC Reporting to Congress

The Committees recommend legislation requiring that the President report to Congress periodically on the organization, size, function, and procedures of the NSC staff.

Such a report should include a list of duties for each NSC staff position from the National Security Adviser on down, and whether incumbents have been detailed from a particular department or agency. It should include a description of the President's guidelines and other instructions to the NSC, the National Security Adviser, and NSC staff for their activities. Particular attention should be paid to the number and tenure of uniformed military personnel assigned to the NSC.

13. Privatization

The Committees recommend a strict accounting of all U.S. Government funds managed by private citizens during the course of a covert action.

The record of the Iran-Contra hearings reflects use of private parties to conduct diplomatic missions and covert actions. Private parties can be of considerable use to the Government in both types of ventures and their use should be permitted. However, the record reflects that funds generated during a covert action are subject to abuse in the hands of a private citizen involved in conducting a covert action.

14. Preservation of Presidential Documents

The Committees recommend that the Presidential Records Act be reviewed to determine how it can be made more effective. Possible improvements include the establishment of a system of consultation with the Archivist of the United States to ensure complete compliance with the Act, the creation of a program of education of affected staff as to the Act's provisions, and the attachment of criminal penalties for violations of the Act.

During the Iran-Contra hearings, Oliver North, John Poindexter, Fawn Hall, and others admitted to having altered and destroyed key documents relating to their activities. Such actions constitute violations of the Presidential Records Act, which was intended to ensure the preservation of documents of historical value that were generated by the Chief Executive and his immediate staff.

15. CIA Inspector General and General Counsel

The Committees recommend that a system be developed so that the CIA has an independent statutory Inspector General confirmed by the Senate, like the Inspectors General of other agencies, and that the General Counsel of the CIA be confirmed by the Senate.

The CIA's internal investigation of the Iran-Contra Affair—conducted by the Office of the Inspector General—paralleled those of the Intelligence Committees and then the Iran Committees. It contributed to, and cooperated with, the Tower Board. Yet, the Office of the Inspector General appears not to have had the manpower, resources or tenacity to acquire key facts uncovered by the other investigations.

The Committees also believe the General Counsel plays an important role in these matters and accordingly should be confirmed by the Senate.

16. Foreign Bank Records Treaties

The Committees recommend that treaties be negotiated with foreign countries whose banks are used to conceal financial transactions by U.S. citizens, and that these treaties covering foreign bank records specify that Congress, not just the Department of Justice, has the right to request, to receive, and to utilize such records.

Many of the important records relating to the Iran-Contra Affair were generated by foreign banks that were used by the Enterprise for the covert arms sales to Iran and the Contra supply operation. The Independent Counsel has sought access to these Swiss bank records pursuant to a treaty with Switzerland. But the Independent Counsel and the Justice Department do not believe the Congressional Committees are entitled under the terms of the treaty to receive these records. New treaties should assure Congress of access to such records and should streamline the process for obtaining them. The Independent Counsel had not received all of the Swiss bank records after 9 months of waiting. Given the use of foreign banks by drug dealers, terrorists, and others involved in unlawful activity, it is more essential than ever that binding secrecy not be a shield for serious criminal conduct.

17. National Security Council

The Committees recommend that all statutory members of the National Security Council should be informed of Findings.

18. Findings Cannot Supercede Law

The Committees recommend legislation affirming what the Committees believe to be the existing law: that a Finding cannot be used by the President or any member of the executive branch to authorize an action inconsistent with, or contrary to, any statute of the United States.

19. Improving Consistency in Dealing with Security Breaches

The Committees recommend that consistent methods of dealing with leaks of classified information by government officials be developed.

The record of these hearings is replete with expressions of concern by executive branch officials over the problem of unauthorized handling and disclosure of classified information. The record is also replete with evidence that high NSC officials breached security regulations and disclosed classified documents to unauthorized persons when it suited their purposes. Yet no steps have been taken to withdraw or even review clearances of such people.

20. Review of Congressional Contempt Statutes

The Committees recommend that the Congressional contempt statutes be reviewed by the appropriate Committees.

There is a need, in Congressional investigations, for a swift and sure method of compelling compliance with Congressional orders for production of documents and the obtaining of testimony. These investigations raised questions about the adequacy of existing statutes.

In addition, new legislation should make clear that a Congressional deposition, including one conducted by staff, is a "proceeding" at which testimony may be compelled under the immunity statute, 18 U.S.C. Section 6001 *et. seq.*

21. Review of Special Compartmented Operations Within the Department of Defense

The Committees recommend that oversight by Intelligence and Armed Services Committees of Congress of special compartmented operations within the Department of Defense be strengthened to include systematic and comprehensive review of all such programs.

22. Review of Weapons Transfers by Chairman of Joint Chiefs of Staff

The Committees recommend that the President issue an order requiring that the Chairman of the Joint Chiefs of Staff should be consulted prior to any transfer of arms by the United States for purposes of presenting his views as to the potential impact on the military balance and on the readiness of United States forces.

23. National Security Adviser

The Committees recommend that Presidents adopt as a matter of policy the principle that the National Security Adviser to the President of the United States should not be an active military officer and that there should be a limit placed on the tour of military officers assigned to the staff of the National Security Council.

24. Intelligence Oversight Board

The Committees recommend that the Intelligence Oversight Board be revitalized and strengthened.

25. Review of Other Laws

The Committees suggest that appropriate standing Committees review certain laws for possible changes:

a. Should restrictions on sales of arms to certain countries under the Arms Export Control Act ("AECA") and other statutes governing overt sales be made applicable to covert sales?

b. Should the Hostage Act be repealed or amended?

c. Should enforcement or monitoring provisions be added to the AECA so that we better control retransfers of U.S.-manufactured arms by countries to whom we sell them?

26. Recommendations for Congress

a. The Committees recommend that the oversight capabilities of the Intelligence Committees be strengthened by acquisition of an audit staff.

b. The Committees recommend that the appropriate oversight committees conduct review of sole-source contracts for potential abuse.

c. The Committees recommend that uniform procedures be developed to ensure that classified information is handled in a secure manner and that such procedures should include clear and strengthened sanctions for unauthorized disclosure of national security secrets or classified information which shall be strictly enforced.

27. Joint Intelligence Committee

The Committees recommend against consolidating the separate House and Senate Intelligence Committees into a single joint committee. We believe that such consolidation would inevitably erode Congress' ability to perform its oversight function in connection with intelligence activities and covert operations. Congress has structured its system for effective oversight in this area to meet the need for secrecy that necessarily accompanies intelligence activities and the creation of a single oversight committee would simply add nothing to this effort.

Section II

The Minority Report

Minority Report

of

Representative Dick Cheney
of Wyoming

Representative William S. Broomfield
of Michigan

Representative Henry J. Hyde
of Illinois

Representative Jim Courter
of New Jersey

Representative Bill McCollum
of Florida

Representative Michael DeWine
of Ohio

Members, House Select Committee to Investigate Covert Arms Transactions with Iran

Senator James McClure
of Idaho

Senator Orrin Hatch
of Utah

Members, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition

Minority Staff

Thomas R. Smeeton
Minority Staff Director

George W. Van Cleve
Chief Minority Counsel

Richard J. Leon
Deputy Chief Minority Counsel

Associate Minority Counsel	Robert W. Genzman	*Minority Editor/Writer*	Michael J. Malbin
Assistant Minority Counsel	Kenneth R. Buck	*Minority Executive Assistant*	Molly W. Tully
Minority Research Director	Bruce Fein	*Minority Staff Assistant*	Margaret W. Dillenburg

Associate Staff	**House of Representatives**
Representative Broomfield	Steven K. Berry David S. Addington
Representative Hyde	Diane S. Dornan
Representative Courter	Dennis E. Teti
Representative McCollum	Tina L. Westby
Representative DeWine	Nicholas P. Wise

Associate Staff	**Senate**
Senator McClure	Jack Gerard
Senator Hatch	Dee Benson

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Part I
Introduction

Chapter 1
Introduction

President Reagan and his staff made mistakes in the Iran-Contra Affair.* It is important at the outset, however, to note that the President himself has already taken the hard step of acknowledging his mistakes and reacting precisely to correct what went wrong. He has directed the National Security Council staff not to engage in covert operations. He has changed the procedures for notifying Congress when an intelligence activity does take place. Finally, he has installed people with seasoned judgment to be White House Chief of Staff, National Security Adviser, and Director of Central Intelligence.

The bottom line, however, is that the mistakes of the Iran-Contra Affair were just that—mistakes in judgment, and nothing more. There was no constitutional crisis, no systematic disrespect for "the rule of law," no grand conspiracy, and no Administration-wide dishonesty or coverup. In fact, the evidence will not support any of the more hysterical conclusions the Committees' Report tries to reach.

No one in the government was acting out of corrupt motives. To understand what they did, it is important to understand the context within which they acted. The decisions we have been investigating grew out of:

—Efforts to pursue important U.S. interests both in Central America and in the Middle East;

—A compassionate, but disproportionate, concern for the fate of American citizens held hostage in Lebanon by terrorists, including one CIA station chief who was killed as a result of torture;

—A legitimate frustration with abuses of power and irresolution by the legislative branch; and

—An equally legitimate frustration with leaks of sensitive national security secrets coming out of both Congress and the executive branch.

Understanding this context can help explain and mitigate the resulting mistakes. It does not explain them away, or excuse their having happened.

The Committees' Report and the Ongoing Battle

The excesses of the Committees' Report are reflections of something far more profound. Deeper than the specifics of the Iran-Contra Affair lies an underlying and festering institutional wound these Committees have been unwilling to face. In order to support rhetorical overstatements about democracy and the rule of law, the Committees have rested their case upon an aggrandizing theory of Congress' foreign policy powers that is itself part of the problem. Rather than seeking to heal, the Committees' hearings and Report betray an attitude that we fear will make matters worse. The attitude is particularly regrettable in light of the unprecedented steps the President took to cooperate with the Committees, and in light of the actions he already has taken to correct past errors.

A substantial number of the mistakes of the Iran-Contra Affair resulted directly from an ongoing state of political guerrilla warfare over foreign policy between the legislative and executive branches. We would include in this category the excessive secrecy of the Iran initiative that resulted from a history and legitimate fear of leaks. We also would include the approach both branches took toward the so-called Boland Amendments. Congressional Democrats tried to use vaguely worded and constantly changing laws to impose policies in Central America that went well beyond the law itself. For its own part, the Administration decided to work within the letter of the law covertly, instead of forcing a public and principled confrontation that would have been healthier in the long run.

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*See "Our View of the Iran-Contra Affair," below at 442 ff.

Given these kinds of problems, a sober examination of legislative-executive branch relations in foreign policy was sorely needed. It still is. Judgments about the Iran-Contra Affair ultimately must rest upon one's views about the proper roles of Congress and the President in foreign policy. There were many statements during the public hearings, for example, about the rule of law. But the fundamental law of the land is the Constitution. Unconstitutional statutes violate the rule of law every bit as much as do willful violations of constitutional statutes. It is essential, therefore, to frame any discussion of what happened with a proper analysis of the Constitutional allocation of legislative and executive power in foreign affairs.

The country's future security depends upon a modus vivendi in which each branch recognizes the other's legitimate and constitutionally sanctioned sphere of activity. Congress must recognize that an effective foreign policy requires, and the Constitution mandates, the President to be the country's foreign policy leader. At the same time, the President must recognize that his preeminence rests upon personal leadership, public education, political support, and interbranch comity. Interbranch comity does not require Presidential obsequiousness, of course. Presidents are elected to lead and to persuade. But Presidents must also have Congressional support for the tools to make foreign policy effective. No President can ignore Congress and be successful over the long term. Congress must realize, however, that the power of the purse does not make it supreme. Limits must be recognized by both branches, to protect the balance that was intended by the Framers, and that is still needed today for effective policy. This mutual recognition has been sorely lacking in recent years.

Why We Reject the Committees' Report

Sadly, the Committees' Report reads as if it were a weapon in the ongoing guerrilla warfare, instead of an objective analysis. Evidence is used selectively, and unsupported inferences are drawn to support politically biased interpretations. As a result, we feel compelled to reject not only the Committees' conclusions, but the supposedly "factual" narrative as well.

We always knew, of course, that there would be differences of interpretation. We had hoped at the start of this process, however, to arrive at a mutually agreeable statement of facts. Unfortunately, that was not to be. The narrative is not a fair description of events, but an advocate's legal brief that arrays and selects so-called "facts" to fit preconceived theories. Some of the resulting narrative is accurate and supported by the evidence. A great deal is overdrawn, speculative, and built on a selective use of the Committees' documentary materials.

The tone of the Report flows naturally from the tone of the Committees' televised hearings. We feel strongly that the decision to air the hearings compromised some intelligence sources and methods by broadcasting inadvertent slips of the tongue. But one thing television did do successfully was lay bare the passions that animated too much of the Committees' work. Who can forget the massive displays of travelers' checks being shown to the country to discredit Col. North's character, weeks before he would be given a chance to reply? Or the "j'accuse" atmosphere with which witnesses were confronted, beginning with the first week's prosecutorial confrontation with General Secord, as Members used the witnesses as objects for lecturing the cameras? These tactics had little to do with factfinding, or with a careful review of policies and institutional processes.

But we shall not dwell on the hearings at this stage. The respected constitutional scholar, John Norton Moore, has written an excellent article about them. We have attached the article, "The Iran-Contra Hearings and Intelligence Oversight in a Democracy," along with other material Professor Moore sent the Committees, as an appendix to our Report. Suffice it to say that we agree with Moore completely. We mention the hearings now only to note that the same spirit, not surprisingly, has dominated the written Report.

Our reasons for rejecting the Committees' Report can best be understood by sampling a few of its major conclusions. By presenting these examples, we hope to alert conscientious readers—whether they agree with our interpretations or not--to take the narrative with a very large grain of salt. Regrettably, readers seeking the truth will be forced to wade through a mass of material to arrive at an independent judgment.

The President's Knowledge of the Diversion

The most politically charged example of the Committees' misuse of evidence is in the way it presents the President's lack of knowledge about the "diversion"—that is, the decision by the former National Security Adviser, Admiral John Poindexter, to authorize the use of some proceeds from Iran arms sales to support the Nicaraguan democratic Resistance, or Contras. This is the one case out of thousands in which the Committees—instead of going beyond the evidence as the Report usually does—refused instead to accept the overwhelming evidence with which it was presented. The Report does grudgingly acknowledge that it cannot refute the President's repeated assertion that he knew nothing about the diversion before Attorney General Edwin Meese discovered it in November 1986. Instead of moving forward from this to more meaningful policy questions, however, the Report seeks, without any support, to plant doubts. We will never know what was in the documents shredded by Lt. Col. Oliver L. North in his last days on the NSC staff, the Report says. Of course we will not. That same point could have been made, however, to cast unsupported doubt upon every one of the Report's own conclusions. This one seems to be singled out because it was where the President put his own credibility squarely on the line.

The evidence shows that the President did not know about the diversion. As we discuss at length in our chapter on the subject, this evidence includes a great deal more than just Poindexter's testimony. Poindexter was corroborated in different ways by the President's own diaries and by testimony from North, Meese, Commander Paul Thompson (formerly the NSC's General Counsel), and former White House Chief of Staff Donald Regan. The conclusion that the President did not know about the diversion, in other words, is one of the strongest of all the inferences one can make from the evidence before these Committees. Any attempt to suggest otherwise can only be seen as an effort to sow meritless doubts in the hope of reaping a partisan political advantage.

The Idea for the Diversion and the Use of Israeli Evidence

In the normal course of the narrative's hundreds of pages, the lack of objectivity stems more from the way it selects, and makes questionable inferences, from a scarcity of evidence, rather than a deliberate decision to ignore what is available. This becomes most obvious when we see a witness dismissed as being not credible for one set of events, and then see the same witnesses' uncorroborated testimony become the basis for a major set of assertions about other events. If these flip-flops could be explained by neutral rules of evidence, or if they were random, we could treat them more lightly. But something quite different seems to be at work here. The narrative seems to make every judgment about the evidence in favor of the interpretation that puts the Administration in the worst possible light. Two examples involving North will make the point clearly. The first has to do with when he first got the idea for a diversion.

North testified that he first got the idea for diverting some of the Iran arms sale proceeds to the Contras from Manucher Ghorbanifar at a London hotel meeting in late January 1986.[1] He acknowledged that the subject of using the residuals to replenish Israeli weapon supplies, and for related operations, came up in a discussion with Amiram Nir, an Israeli official, in late December or early January. North specifically said, however, that the Nir conversation had nothing to do with the Contras.[2]

The Committees also received a chronology from the Israeli Government, however, that claimed North told Israeli supply officials in New York on December 6 that the Contras needed money, and that he intended to use proceeds from the Iran arms sales to get them some. When North was asked about the December 6 meeting, he reiterated that he did not recall discussing the Contras with anyone involved in the Iran initiative before the late January meeting with Ghorbanifar.[3]

The Committees' Report has used the Israeli chronology, and the timing of North's alleged December 6 conversation, to suggest that the idea of gaining funds for the Nicaraguan Resistance was an important consideration that kept the Iran arms initiative alive, more than a month before the President signed the Finding of January 17. The problem with making this important inference is that we have no way of knowing whether the Israeli chronology is accurate. It may be, but then again it may not. The Government of Israel made its chronology available to the Committees fairly late in our investigations, and consistently refused to let key Israeli participants give depositions to the Committees' counsel.

We have no quarrel with the fact that Israel, or any other sovereign nation, may refuse to let its officials and private citizens be subject to interrogation by a foreign legislature. The United States, no doubt, would do the same. But we do object vehemently to the idea that the Committees should use unsworn and possibly self-serving information from a foreign government to reject sworn testimony given by a U.S. official—particularly when the U.S. official's testimony was given under a grant of immunity that protected him from prosecution arising out of the testimony for any charge *except perjury.*

Even if North did mention the Contras to the Israeli supply officials in early December, however, the inference made from the timing would be unfair. The Committees have no evidence that would give them any reason to believe that anyone other than North even considered the Contras in connection with the Iran arms sales before the January Finding. Poindexter specifically testified that he first heard of the idea when North asked him to authorize it in February.[4] North testified that he first mentioned the idea to the Director of Central Intelligence, William J. Casey, at about the same time, in late January or early February, after the post-finding London meeting.[5] More importantly, North and Poindexter both testified that no one else in the U.S. Government was told about a diversion before this time. What that means is that the diversion cannot possibly have been a consideration for people at the policymaking level when the President decided to proceed with the Iran initiative in January.

Off-the-Shelf, Privately Funded Covert Operations

Paradoxically, the Committees seem to have had no difficulty swallowing North's testimony that Director Casey intended to create a privately funded, off-the-shelf covert operations capability for use in a variety of unforeseen circumstances.[6] This is despite the fact that two people close to Casey at the CIA, Deputy Director of Central Intelligence John M. McMahon and Deputy Director for Operations Clair George, both denied Casey would ever have countenanced such an idea. "My experience with Bill Casey was absolute," said George. "He would never have approved it." [7]

We have to concede the possibility, of course, that Casey might have discussed such an idea speculatively with North without mentioning it to others at the CIA.* As with so many other questions, we will never know the answers with certainty. Casey's terminal illness prevented him from testifying between December 1986 and his death in May 1987. Nevertheless, it is interesting to note how much the majority is willing to make of one uncorroborated, disputed North statement that happens to suit its political purpose, in light of the way it treats others by North that are less convenient for the narrative's thesis.

The Allegation of Systematic Cover-up

The Report also tries to present the events of November 1986 as if they represent a systematic attempt by the Administration to cover up the facts of the Iran initiative. The reason for the alleged coverup, it is suggested, was to keep the American people from learning that the 1985 arms sales were "illegal."

There can be no question that the Administration was reluctant to make all of the facts public in early November, when news of the arms sales first came out in a Lebanese weekly. It is clear from the evidence that this was a time when covert diplomatic discussions were still being conducted with Iran, and there was some basis for thinking more hostages might be released. We consider the Administration's reticence in the early part of the month to have been completely justifiable.

However, as November 1986 wore on, Poindexter and North did falsify the documentary record in a way that we find deplorable. The outstanding fact about the late November events, however, is that Attorney General Meese understood the importance of getting at the truth. Working on a very tight schedule, Meese and three others from the Department of Justice managed to uncover the so-called "diversion memorandum" and reported it to the President. The President immediately removed Poindexter and North from the NSC staff. Shortly afterwards, he asked for an Independent Counsel to be appointed, appointed the Tower Board, and supported the establishment of select Congressional investigative committees, to which he has given unprecedented cooperation.

The Committees' Report criticizes Meese for not turning his fact-finding operation into a formal criminal investigation a day or two earlier than he did. In fact, the Report strongly tries to suggest that Meese either must have been incompetent or must have been trying to give Poindexter and North more time to cover their tracks. We consider the first of these charges to be untrue and the second to be outrageous. We shall show in a later chapter that Meese worked with the right people, and the right number of them, for a national security fact-finding investigation. Whatever after-the-fact criticism people may want to make, it is irresponsible to portray the Administration, in light of Meese's behavior, as if it were interested in anything but learning the truth and getting it out as quickly as possible.

The "Rule of Law"

Finally, the Committees' Report tries—almost as an overarching thesis—to portray the Administration as if it were behaving with wanton disregard for the law. In our view, *every single one* of the Committees' legal interpretations is open to serious question. On some issues—particularly the ones involving the statutes governing covert operations—we believe the law to be clearly on the Administration's side. In every other case, the issue is at least debatable. In some, such as the Boland Amendment, we are convinced we have by far the better argument. In a few others—such as who owns the funds the Iranians paid Gen. Richard Secord and Albert Hakim—we see the legal issue as being close. During the course of our full statement, we shall indicate which is which.

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*We use the word "speculatively" here because North testified, at the same time as he introduced the idea, that it never was put into effect.

What the Committees' Report has done with the legal questions, however, is to issue a one-sided legal brief that pretends the Administration did not even have worthwhile arguments to make. As if that were not enough, the Report tries to build upon these one-sided assertions to present a politicized picture of an Administration that behaved with contempt for the law. If nothing else would lead readers to view the Report with extreme skepticism, the adversarial tone of the legal discussion should settle the matter.

Our View of the Iran-Contra Affair

The main issues raised by the Iran-Contra Affair are not legal ones, in our opinion. This opinion obviously does have to rest on some legal conclusions, however. We have summarized our legal conclusions at the end of this introductory chapter. The full arguments appear in subsequent chapters. In our view, the Administration did proceed legally in pursuing both its Contra policy and the Iran arms initiative. We grant that the diversion does raise some legal questions, as do some technical and relatively insubstantial matters relating to the Arms Export Control Act. It is important to stress, however, that the Administration could have avoided every one of the legal problems it inadvertently encountered, while continuing to pursue the exact same policies as it did.

The fundamental issues, therefore, have to do with the policy decisions themselves, and with the political judgments underlying the way policies were implemented. When these matters are debated as if they were legal—and even criminal—concerns, it is a sign that interbranch intimidation is replacing and debasing deliberation. That is why we part company not only with the Committees Report's answers, but with the very questions it identifies as being the most significant.

There are common threads to what we think went wrong with the Administration's policies toward Central America and Iran. Before we can identify those threads, however, we will give a very brief overview of the two halves of the Committees' investigations. For both halves, we begin with the context within which decisions were made, describe the decisions, and then offer some judgments. After taking the parts separately, we will then be in a position to talk about commonalities.

Nicaragua

The Nicaraguan aspect of the Iran-Contra Affair had its origins in several years of bitter political warfare over U.S. policy toward Central America between the Reagan Administration and the Democratic House of Representatives. The United States had supported the Sandinistas in the last phase of the dictatorial regime of Anastasio Somoza and then gave foreign aid to Nicaragua in 1979 and 1980, the first years of Sandinista rule. By 1980, however, the Sandinistas had shed their earlier "democratic reformer" disguise and begun to suppress civil liberties at home and export revolution abroad. As a result, the United States suspended all aid to Nicaragua in the closing days of the Carter Administration.

During the early years of the Reagan Administration, the Soviet Union and its allies dramatically increased their direct military support for Nicaragua, and their indirect support, through Nicaragua, of Communist guerrillas in El Salvador. The Reagan Administration decided to provide covert support for the Nicaraguan democratic Resistance in late 1981, and Congress agreed. By late 1982, however, Congress adopted the first of a series of so-called "Boland Amendments," prohibiting the CIA and Defense Department from spending money "for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras." The House voted for this "limitation" by a margin of 411-0, in large part because everyone understood that the Administration could continue to support the Resistance as long as the purpose of the support was to prevent the revolution from being exported to El Salvador.

This approach left many unsatisfied. Some within the Administration wanted a broader attack on the Sandinista regime. Some within Congress wanted to end all support for the Contras and begin moving back toward the 1979-80 policy of providing economic assistance to the Sandinistas. Neither side of the policy debate was politically strong enough to prevail. Instead, during the course of the next several years, Congress and the Administration "compromised" on a series of ambiguous formulas.

Meanwhile, the Soviet buildup accelerated, and Sandinista support for the insurgents in El Salvador continued. In May 1983, the House Intelligence Committee, chaired by Representative Edward P. Boland, reported:

> It is not popular support that sustains the insurgents [in El Salvador]. As will be discussed later, this insurgency depends for its lifeblood—arms, ammunition, financing, logistics and command-and-control facilities—upon outside assistance from Nicaragua and Cuba. This Nicaraguan-Cuban contribution to the Salvadoran insurgency is long standing. It began shortly after the overthrow of Somoza in July, 1979. It has provided—by land, sea and air—the great bulk of the military equipment and support received by the insurgents.[8]

Despite this finding, House Democrats succeeded in late 1983 in limiting appropriated support for the Resistance to an amount intentionally calculated to be insufficient for the full fiscal year. The funds ran out by late spring or summer 1984. By October, the most stringent of the Boland Amendments had taken effect. Paradoxically, Congress' 1983-85 decisions came in a context in which it was continuing to pass laws that accused the Sandinistas of violating the non-aggression provisions of the charter of the Organization of American States—a violation that the OAS charter says calls for a response by other member nations, including the United States.*

Actions

By the late spring of 1984, it became clear that the Resistance would need some source of money if it were to continue to survive while the Administration tried to change public and Congressional opinion. To help bridge the gap, some Administration officials began encouraging foreign governments and U.S. private citizens to support the Contras. NSC staff members played a major role in these efforts, but were specifically ordered to avoid direct solicitations. The President clearly approved of private benefactor and third-country funding, and neither he *nor his designated agents* could constitutionally be prohibited from encouraging it. To avoid political retribution, however, the Administration did not inform Congress of its actions.

In addition to encouraging contributions, the NSC's North, with varying degrees of authorization and knowledge by National Security Advisers Robert C. McFarlane and Admiral John Poindexter:

—Helped coordinate or facilitate actions taken by private citizens and by certain U.S.

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*Despite the fact that the Committees announced that their hearings were to be neither "pro-Contra nor anti-Contra," the fact is that the Committees' staff left no stone unturned in its efforts to obtain information that might be politically damaging to the Resistance, even if irrelevant to the Committees' mandates. The Committees' investigators reviewed major portions, if not all, of the Contras' financial records; met with witnesses who alleged the Resistance was involved in terrorism or drug-running; investigated the financial conduct of the NHAO program, and so on. The fact is, however, that the Committees received no credible evidence of misconduct by the Resistance. It comes as little surprise, of course, that the Committees' majority does not explicitly acknowledge this. To give but one example of the Committees' findings, investigators produced a detailed memorandum concerning allegations of drug running, and concluded that the allegation had no substance. This memorandum was included in the Committees' record and is reprinted as Appendix E to the Minority Report. For this reason, suggestions that the Committees have not investigated such matters, and other Committees of Congress should, ought to be seen for what they are: political harassment by Congressional opponents of the Resistance.

Government officials to direct money, arms, or supplies from private U.S. citizens or foreign governments to the Nicaraguan Resistance;

—Provided the Resistance with expert military judgment or advice to assist in the resupply effort; and

—Together with others in Government, provided the Resistance with intelligence information that was useful in the resupply effort.

Poindexter and North testified that they both believed these activities were legally permissible and authorized. They also said that the President was kept generally informed of their coordinating role. The President has said, however, that he was not aware of the NSC staff's military advice and coordination.

Because the Boland Amendment is an appropriations rider, it is worth noting that there is no evidence that any substantial amounts of appropriated taxpayer funds were used in support of these efforts. In addition, the NSC staff believed—as we do—that the prohibition did not cover the NSC.[9] At no time, in other words, did members of the President's staff think their activities were illegal. Nevertheless, the NSC staff did make a concerted effort to conceal its actions from Congress. There is no evidence, however, to suggest that the President or other senior Administration officials knew about this concealment.

Judgments

The effort to raise foreign government and private funds for the Resistance raised about $35 million between mid-1984 and mid-1986—virtually all of it from foreign countries. In addition, the much discussed and unauthorized diversion orchestrated by North and Poindexter contributed about $3.8 million more. Without this support, according to uncontroverted testimony the Committees received, there can be no question that the Resistance would have been annihilated. In other words, the support clearly did make an important strategic difference in the 2 years it took the Administration to persuade Congress to reverse its position. The short-term benefits of the effort are therefore undeniable. The long-term costs, however, seem not to have been adequately considered.

We do believe, for reasons explained in the appendix to this introductory chapter and in our subsequent chapters on Nicaragua, that virtually all of the NSC staff's activities were legal, with the possible exception of the diversion of Iran arms sale proceeds to the Resistance. We concede that reasonable people may take a contrary view of what Congress intended the Boland Amendments to mean. But we also agree with a letter from Prof. John Norton Moore, which appears as Appendix B to our Report, that to the extent that the amendment was ambiguous, "well recognized principles of due process and separation of powers would require that it be interpreted to protect Executive Branch flexibility." [10]

Notwithstanding our legal opinions, we think it was a fundamental mistake for the NSC staff to have been secretive and deceptive about what it was doing. The requirement for building long-term political support means that the Administration would have been better off if it had conducted its activities in the open. Thus, the President should simply have vetoed the strict Boland Amendment in mid-October 1984, even though the Amendment was only a few paragraphs in an approximately 1,200 page-long continuing appropriations resolution, and a veto therefore would have brought the Government to a standstill within 3 weeks of a national election. Once the President decided against a veto, it was self-defeating to think a program this important could be sustained by deceiving Congress. Whether technically illegal or not, it was politically foolish and counterproductive to mislead Congress, even if misleading took the form of artful evasion or silence instead of overt misstatement.

We do believe firmly that the NSC staff's deceits were not meant to hide illegalities. Every witness we have heard told us his concern was not over legality, but with the fear that Congress would respond to complete disclosure with political reprisals, principally by tightening the Boland Amendments. That risk should have been taken.

We are convinced that the Constitution protects much of what the NSC was doing—particularly those aspects that had to do with encouraging contributions and sharing information. The President's inherent constitutional powers are only as strong, however, as the President's willingness to defend them. As for the NSC actions Congress could constitutionally have prohibited, it would have been better for the White House to have tackled that danger head on. Some day, Congress' decision to withhold resources may tragically require U.S. citizens to make an even heavier commitment to Central America, perhaps one measured in blood and not dollars. The commitment that might eliminate such an awful future will not be forthcoming unless the public is exposed to and persuaded by a clear, sustained and principled debate on the merits.

Iran

The Iran arms sales had their roots in an intelligence failure. The potential geopolitical importance of Iran for the United States would be obvious to anyone who looks at a map. Despite Iran's importance, the United States was taken by surprise when the Shah fell in 1979, because it had not developed an adequate human intelligence capability there. Our hearings have established that essentially nothing had been done to cure this failure by the mid-1980's. Then, the United States was approached by Israel in 1985 with a proposal that the United States acquiesce in some minor Israeli arms sales to Iran. This proposal came at a time when the United States was already considering the advisability of such sales. For long term, strategic reasons, the United States had to improve relationships with at least some of the currently important factions in Iran. The lack of adequate intelligence about these factions made it important to pursue any potentially fruitful opportunity; it also made those pursuits inherently risky. U.S. decisions had to be based on the thinnest of independently verifiable information. Lacking such independent intelligence, the United States was forced to rely on sources known to be biased and unreliable.

Well aware of the risk, the Administration nonetheless decided the opportunity was worth pursuing. The major participants in the Iran arms affair obviously had some common and some conflicting interests. The key question the United States had to explore was whether the U.S. and Iranian leadership actually felt enough of a common interest to establish a strategic dialogue.

Actions

To explore the chance for an opening, the President agreed first to approve Israeli sales to Iran in 1985, and then in 1986 to sell U.S. arms directly. The amounts involved were meager. The total amount, including all of the 1985 and 1986 sales combined, consisted of 2004 TOW antitank missiles, 18 HAWK antiaircraft missiles, and about 200 types of HAWK spare parts.

There was a strong division of opinion in the Administration about the advisability of these arms sales, a division that never abated. Unfortunately, this served as a pretext for Poindexter's decision not to keep the Secretaries of State or Defense informed about the detailed progress of the negotiations between the United States and Iran. One reason for the failure to inform appears to have been a past history in which some Administration officials may have leaked sensitive information as a way to halt actions with which they disagreed. Poindexter's secretive inclinations were abetted by Secretary Shultz, who all but invited Poindexter not to keep him informed because he did not want to be accused of leaking. They also were abetted by Secretary Weinberger, who—like Shultz—was less than vigorous about keeping himself informed about a policy he had good reason to believe was still going forward.

The first deals with the Iranian Government were flawed by the unreliability of our intermediary, Manucher Ghorbanifar. For all of his unreliability, however, Ghorbanifar helped obtain the release of two U.S. hostages and did produce high Iranian officials for the first face-to-face meetings between our governments in 5 years. At those meetings, one of which was held in Tehran in May 1986, U.S. officials sought consistently to make clear that we were interested in a long-term strategic relationship with Iran to oppose the Soviet Union's territorial interests. As concerned as the President had become personally for the fate of the hostages—including the CIA's Beirut station chief, William Buckley, who was repeatedly tortured until he died—the hostages were always presented in these negotiations as obstacles to be overcome, not as the reason for the initiative. But Ghorbanifar appeared to have misled both sides, and the Iranian officials seemed to be interested only in weapons, and in using the hostages for bargaining leverage.

After the Tehran meeting, the United States was able to approach a very high Iranian official using a Second Channel arranged by Albert Hakim and his associates. There is little doubt about Hakim's business motives in arranging these meetings; there is equally little doubt that this channel represented the highest levels of the Iranian Government. Discussions with this channel began in the middle of 1986 and continued until December. They resulted in the release of one further hostage and U.S. officials expected them to result in some more. Perhaps more importantly, these discussions appear to have been qualitatively different from the ones conducted through the First Channel arranged by Ghorbanifar, and included some talks about broad areas of strategic cooperation.

As a result of factional infighting inside the Iranian Government, the initiative was exposed and substantive discussions were suspended. Not surprisingly, given the nature of Iranian politics, the Iranian Government has publicly denied that significant negotiations were underway. Congress was not informed of the Administration's dealings with Iran until after the public disclosure. The failure to disclose resembled the Carter Administration's similar decisions not to disclose in the parallel Iranian hostage crisis of 1979-81. President Reagan withheld disclosure longer than Carter, however—by about 11 months to 6.

Judgments

The Iran initiative involved two governments that had sharp differences between them. There were also very sharp internal divisions in both Iran and the United States about how to begin narrowing the differences between the two countries. In such a situation, the margin between narrow failure and success can seem much wider after the fact than it does during the discussions. While the initial contacts developed by Israel and used by the United States do not appear likely to have led to a long-term relationship, we cannot rule out the possibility that negotiations with the Second Channel might have turned out differently. At this stage, we never will know what might have been.

In retrospect, it seems clear that this initiative degenerated into a series of "arms for hostage" deals. It did not look that way to many of the U.S. participants at the time. Nevertheless, the fact that the negotiations never were able clearly to separate the long-term from the short-term issues, confirms our instinctive judgment that the United States should not have allowed arms to become the currency by which our country's bona fides were determined. There is no evidence that these relatively minor sales materially altered the military balance in the Iran-Iraq war. However, the sales damaged U.S. credibility with our allies, making it more difficult, among other things, for the Administration to enforce its preexisting efforts to embargo arms sales to Iran.

The decision to keep Congress in the dark for 11 months disturbs all Members of these Committees. It is clear that the Reagan Administration simply did not trust the Congress to keep secrets. Based on the history of leaks we shall outline in a later chapter, it unfortunately had good reason to be concerned. This observation is not offered as a justification, but as an important part of the context that must be understood. To help remove this concern as an excuse for future Administrations, we are proposing a series of legislative and administrative recommendations to improve both Congress' and the executive branch's ability to maintain national security secrets and deter leaks.

Diversion

The lack of detailed information-sharing within the Administration was what made it possible for Poindexter to authorize the diversion and successfully keep his decision to do so from the President. We have already indicated our reasons for being convinced the President knew nothing about the diversion. The majority Report says that if the President did not know about it, he should have. We agree, and so does the President. But unlike some of the other decisions we have been discussing, the President cannot himself be faulted for this one. The decision was Admiral Poindexter's, and Poindexter's alone.

As supporters of a strong Presidential role in foreign policy, we cannot take Poindexter's decision lightly. The Constitution strikes an implicit bargain with the President: in return for getting significant discretionary power to act, the President was supposed to be held accountable for his decisions. By keeping an important decision away from the President, Poindexter was acting to undercut one foundation for the discretionary Presidential power he was exercising.

The diversion also differs from the basic Nicaragua and Iran policies in another important respect: we can find nothing to justify or mitigate its having occurred. We do understand the enthusiasm North displayed when he told the Committees it was a "neat idea" to use money from the Ayatollah, who was helping the Sandinistas, to support the Contras. But enthusiasm is not a sufficient basis for important policy decisions. Even if there were nothing else wrong with the diversion, the decision to mix two intelligence operations increased the risk of pursuing either one, with predictably disastrous repercussions.

Unlike the Committees' majority, we believe there are good legal arguments on both sides of the question of whether the proceeds of the arms sales belong to the U.S. Government or to Secord and Hakim. For that reason, we think it unlikely, under the circumstances, that the funds were acquired or used with any criminal intent. Nevertheless, the fact that the ownership seems unclear under current law does not please us. We do believe that Secord and Hakim were acting as the moral equivalents of U.S. agents, even if they were not U.S. agents in law.

The diversion has led some of the Committees' Members to express a great deal of concern in the public hearings about the use of private citizens in covert operations in settings that mix private profits with public benefits. We remain convinced that covert operations will continue to have to use private agents or contractors in the future, and that those private parties will continue to operate at least partly from profit motives. If the United States tries to limit itself to dealing only with people who act out of purely patriotic motives, it effectively will rule out any worthwhile dealing with most arms dealers and foreign agents. In the real world of international politics, it would be foolish to avoid working with people whose motives do not match our own. Nevertheless, we do feel troubled by the fact that there was not enough legal clarity, or accounting controls, placed on the Enterprise by the NSC.

The Uncovering

It is clear that officials of the National Security Council misled the Congress and other members of the Administration about their activities in support of the Nicaraguan Resistance. This occurred without authorization from outside the NSC staff. It is also clear that the NSC staff actively misled other Administration officials and Congress about the Iran initiative both before and after the first public disclosure. The shredding of documents and other efforts at covering up what had happened were also undertaken by NSC staff members acting on their own, without the knowledge, consent, or acquiescence of the President or other major Administration officials, with the possible exception of Casey.

In the week or two immediately after the Iran initiative was disclosed in a Lebanese weekly, the President did not tell the public all that he knew, because negotiations with the Second Channel were still going on, and there remained a good reason for hoping some more hostages might soon be released. Once the President learned that not all of the relevant facts were being brought to his attention, however, he authorized the Attorney General immediately to begin making inquiries. Attorney General Meese acted properly in his investigation, pursuing the matter as a fact-finding effort because he had no reason at the time to believe a crime had been committed. Arguments to the contrary are based strictly on hindsight. In our opinion, the Attorney General and other Justice Department officials did an impressive job with a complicated subject in a short time. After all, it was their investigation that uncovered and disclosed the diversion of funds to the Contras.

Common Threads

The different strands of the Iran-Contra Affair begin coming together, in the most obvious way, on the level of personnel. Both halves of the event were run by the NSC, specifically by McFarlane, Poindexter, and North. With respect to Nicaragua, the Boland Amendment just about ruled all other agencies out of the picture. With respect to Iran, the other parts of the executive branch—from the State and Defense Departments to the CIA—seemed more than happy to let the NSC be in charge.

It is ironic that many have looked upon these events as signs of an excessively powerful NSC staff. In fact, the NSC's roles in the Iran and Nicaragua policies were exceptions rather than the rule. The Reagan Administration has been beleaguered from the beginning by serious policy disagreements between the Secretaries of State and Defense, among others, and the President has too often not been willing to settle those disputes definitively. The press accounts written at the time Poindexter was promoted to fill McFarlane's shoes saw his selection as a decision to have the National Security Adviser play the role of honest broker, with little independent power.[11] This image of the NSC lasted almost until the Iran arms initiative became public. Poindexter was seen as a technician, chosen to perform a technical job, not to exercise political judgment.[12]

Once the NSC had to manage two operations that were bound to raise politically sensitive questions, it should have been no surprise to anyone that Poindexter made some mistakes. It is not satisfactory, however, for people in the Administration simply to point the finger at him and walk away from all responsibility. For one thing, the President himself does have to bear personal responsibility for the people he picks for top office. But just as it would not be appropriate for the fingers to point only at Poindexter, neither is it right for them only to point to the top.

Everyone who had a stake in promoting a technician to be National Security Adviser should have realized that meant they had a responsibility to follow and highlight the political consequences of operational decisions for the President. Even if the Cabinet officials did not support the basic policy, they had an obligation to remain engaged, if they could manage to do so without constantly rearguing the President's basic policy choice. Similarly, Chief of Staff Donald Regan may not have known, or had reason to know, the details of the Iran initiative or Contra resupply effort. But he should have known that North's responses to Congressional inquiries generated by press reports were too important politically to be left to the people who ran the NSC staff.

The discussion of personnel ultimately gets around to the importance of political judgment. We can be more precise about what that means, however, if we consider the common threads in the decisions we have already labelled as mistakes. These have included:

—The President's decision to sign the Boland Amendment of 1984, instead of vetoing it;

—The President's less-than-robust defense of his office's constitutional powers, a mistake he repeated when he acceded too readily and too completely to waive executive privilege for our Committees' investigation;

—The NSC staff's decision to deceive Congress about what it was doing in Central America;

—The decision, in Iran, to pursue a covert policy that was at odds with the Administration's public expressions, without any warning signals to Congress or our allies;

—The decision to use a necessary and constitutionally protected power of withholding information from Congress for unusually sensitive covert operations, for a length of time that stretches credulity;

—Poindexter's decision to authorize the diversion on his own; and, finally,

—Poindexter and North's apparent belief that covering up was in the President's political interest.

We emphatically reject the idea that through these mistakes, the executive branch subverted the law, undermined the Constitution, or threatened democracy. The President is every bit as much of an elected representative of the people as is a Member of Congress. In fact, he and the Vice President are the only officials elected by the whole Nation. Nevertheless, we do believe the mistakes relate in a different way to the issue of democratic accountability. They provide a good starting point for seeing what both sides of the great legislative-executive branch divide must do to improve the way the Government makes foreign policy.

Congress

Congress has a hard time even conceiving of itself as contributing to the problem of democratic accountability. But the record of ever-changing policies toward Central America that contributed to the NSC staff's behavior is symptomatic of a frequently recurring problem. When Congress is narrowly divided over highly emotional issues, it frequently ends up passing intentionally ambiguous laws or amendments that postpone the day of decision. In foreign policy, those decisions often take the form of restrictive amendments on money bills that are open to being amended again *every year,* with new, and equally ambiguous, language replacing the old. This matter is exacerbated by the way Congress, year after year, avoids passing appropriations bills before the fiscal year starts and then wraps them together in a governmentwide continuing resolution loaded with amendments that cannot be vetoed without threatening the whole Government's operation.

One properly democratic way to ameliorate the problem of foreign policy inconsistency would be to give the President an opportunity to address the major differences between himself and the Congress cleanly, instead of combining them with unrelated subjects. To restore the Presidency to the position it held just a few administrations ago, Congress should exercise the self-discipline to split continuing resolutions into separate appropriation bills and present each of them individually to the President for his signature or veto. Even better would be a line-item veto that would permit the President to force Congress to an override vote without jeopardizing funding for the whole Government. Matters of war and peace are too important to be held hostage to governmental decisions about funding Medicare or highways. To describe this legislative hostage taking as democracy in action is to turn language on its head.

The Presidency

The Constitution created the Presidency to be a separate branch of government whose occupant would have substantial discretionary power to act. He was not given the power of an 18th century monarch, but neither was he meant to be a creature of Congress. The country needs a President who can exercise the powers the Framers intended. As long as any President has those powers, there will be mistakes. It would be disastrous to respond to the possibility of error by further restraining and limiting the powers of the office. Then, instead of seeing occasional actions turn out to be wrong, we would be increasing the probability that future Presidents would be unable to act decisively, thus guaranteeing ourselves a perpetually paralyzed, reactive, and unclear foreign policy in which mistake by inaction would be the order of the day.

If Congress can learn something about democratic responsibility from the Iran-Contra Affair, future Presidents can learn something too. The Administration would have been better served over the long run by insisting on a principled confrontation over those strategic issues that can be debated publicly. Where secrecy is necessary, as it often must be, the Administration should have paid more careful attention to consultation and the need for consistency between what is public and what is covert. Inconsistency carries a risk to a President's future ability to persuade, and persuasion is at the heart of a vigorous, successful presidency.

A President's most important priorities, the ones that give him a chance to leave an historic legacy, can be attained only through persistent leadership that leads to a lasting change in the public's understanding and opinions. President Reagan has been praised by his supporters as a "communicator" and criticized by his opponents as an ideologue. The mistakes of the Iran-Contra Affair, ironically, came from a lack of communication and an inadequate appreciation of the importance of ideas. During President Reagan's terms of office, he has persistently taken two major foreign policy themes to the American people: a strong national defense for the United States, and support for the institutions of freedom abroad. The 1984 election showed his success in persuading the people to adopt his fundamental perspective. The events since then have threatened to undermine that achievement by shifting the agenda and refocusing the debate. If the President's substantial successes are to be sustained, it is up to him, and those of us who support his objectives, to begin once again with the task of democratic persuasion.

Afterword: Summary of Legal Conclusions

Nicaragua

The main period under review during these investigations was October 1984 through October 1986. During this period, various versions of the Boland Amendment restricted the expenditure of appropriated funds available to agencies or entities involved in intelligence activities from being spent directly or indirectly to support military or paramilitary operations in Nicaragua. In August 1985, the State Department was authorized to spend $27 million to provide humanitarian assistance to the Nicaraguan democratic Resistance. In December 1985, the CIA was authorized to spend funds specifically appropriated to provide communications equipment and training and to provide intelligence and counterintelligence advice and information to assist military operations by the Resistance. On October 18, 1986, $100 million in direct military support for the Contras was made available for fiscal year 1987. Our understanding of the effect of these prohibitions rests on both statutory and constitutional interpretations.

(1) The Constitution protects the power of the President, either acting himself or through agents of his choice, to engage in whatever diplomatic communications with other countries he may wish. It also protects the ability of the President and his agents to

persuade U.S. citizens to engage voluntarily in otherwise legal activity to serve what they consider to be the national interest. That includes trying to persuade other countries to contribute their own funds for causes both countries support. To whatever extent the Boland Amendments tried to prohibit such activity, they were clearly unconstitutional.

(2) If the Constitution prohibits Congress from restricting a particular Presidential action directly, it cannot use the appropriation power to achieve the same unconstitutional effect. Congress does have the power under the Constitution, however, to use appropriations riders to prohibit the entire U.S. Government from spending any money, including salaries, to provide covert or overt military support to the Contras. Thus, the Clark Amendment prohibiting all U.S. support for the Angolan Resistance in 1976 was constitutional. Some members of Congress who supported the Boland Amendment may have thought they were enacting a prohibition as broad as the Clark Amendment. The specific language of the Boland Amendment was considerably more restricted, however, in two respects.

(a) By limiting the coverage to agencies or entities involved in intelligence activities, Congress chose to use language borrowed directly from the Intelligence Oversight Act of 1980. In the course of settling on that language in 1980, Congress deliberately decided to exclude the National Security Council (NSC) from its coverage. At no time afterward did Congress indicate an intention to change the language's coverage. The NSC therefore was excluded from the Boland Amendment and its activities were therefore legal under this statute.

(b) The Boland prohibitions also were limited to spending that directly or indirectly supported military or paramilitary operations in Nicaragua. Under this language, a wide range of intelligence-gathering and political support activities were still permitted, and were carried out with the full knowledge of the House and Senate Intelligence Committees.

(c) Virtually all, if not all, of the CIA's activities examined by these Committees occurred after the December 1985 law authorized intelligence sharing and communications support and were fully legal under the terms of that law.

(d) If the NSC had been covered by the Boland Amendments, most of Oliver North's activity still would have fallen outside the prohibitions for reasons stated in (b) and (c) above.

Iran

The Administration was also in substantial compliance with the laws governing covert actions throughout the Iran arms initiative.

(1) It is possible to make a respectable legal argument to the effect that the 1985 Israeli arms transfers to Iran technically violated the terms of the Arms Export Control Act (AECA) or Foreign Assistance Act (FAA), assuming the arms Israel transferred were received from the United States under one or the other of these statutes. However:

(a) Covert transfers under the National Security Act and Economy Act were understood to be alternatives to transfers under the AECA and FAA that met both of these latter acts' essential purposes by including provisions for Presidential approval and Congressional notification.

(b) The requirement for U.S. agreement before a country can retransfer arms obtained from the United States is meant to insure that retransfers conform to U.S. national interests. In this case, the Israeli retransfers occurred with Presidential approval indicating that they did so conform.

(c) The Israeli retransfer and subsequent replenishment made the deal essentially equivalent to a direct U.S. sale, with Israel playing a role fundamentally equivalent to that of a middleman. Since the United States could obviously have engaged in a direct transfer, and did so in 1986, whatever violation may have occurred was, at most, a minor and inadvertent technicality.

(2) A verbal approval for covert transactions meets the requirements of the Hughes-Ryan Amendment and National Security Act. Verbal approvals ought to be reduced to writing as a matter of sound policy, but they are not illegal.

(3) Similarly, the President has the constitutional and statutory authority to withhold notifying Congress of covert activities under very rare conditions. President Reagan's decision to withhold notification was essentially equivalent to President Carter's decisions in 1979–1980 to withhold notice for between 3 and 6 months in parallel Iran hostage operations. We do not agree with President Reagan's decision to withhold notification for as long as he did. The decision was legal, however, and we think the Constitution mandates that it should remain so. If a President withholds notification for too long and then cannot adequately justify the decision to Congress, that President can expect to pay a stiff political price, as President Reagan has certainly found out.

Diversion

We consider the ownership of the funds the Iranians paid to the Secord-Hakim "Enterprise" to be in legal doubt. There are respectable legal arguments to be made both for the point of view that the funds belong to the U.S. Treasury and for the contention that they do not. If the funds do not belong to the United States, then the diversion amounted to third-country or private funds being shipped to the Contras. If they did belong to the United States, there would be legal questions (although not, technically, Boland Amendment questions) about using U.S.-owned funds for purposes not specifically approved by law. The answer does not seem to us to be so obvious, however, as to warrant treating the matter as if it were criminal.

Endnotes

1. North Test., *Hearings*, 100-7, Part I, 7/8/87, at p. 106; 7/10/87, at 295–96; Vol. II, 7/14/87, at pp. 164–65.

2. *Id.*, Vol. I, 7/10/87, at p. 296.

3. *Id.*, at p. 295.

4. Poindexter Test., *Hearings*, 100–8, 7/15/87, at p. 35.

5. North Test., *Hearings*, 100–7, Part I, 7/8/87, at p. 139.

6. North Test., *Hearings*, 100–7, Part I, 7/8/87, at p. 140.

7. George Test., *Hearings*, 100–11, 8/6/87, at p. 172. See also McMahon Dep., 9/2/87, at 3–8.

8. U.S. House of Representatives, Permanent Select Committee on Intelligence, Report to Accompany H.R. 2760, Amendment to the Intelligence Authorization Act for Fiscal Year 1983, May 13, 1983, p. 2.

9. McFarlane may be an arguable exception. See chapter 7 below.

10. John Norton Moore, letter to Brendan Sullivan, July 9, 1987, p. 2, reprinted along with other Moore material at the end of our separate views.

11. See, for example, "Primus, Pares and Poindexter," New York Times editorial, December 6, 1985; Mary Belcher, "White House shift realigns influence in foreign policy; more clout likely for State, Defense," The Washington Times, December 5, 1985, p. 1.

12. Leslie H. Gelb, "How the New Admiral at the White House Fares," New York Times, September 23, 1986, p. 24.

Part II

The Foreign Affairs Powers of the Constitution and the Iran-Contra Affair

Chapter 2

The Foreign Affairs Powers and the Framers' Intentions

Judgments about the Iran-Contra Affair ultimately must rest upon one's views about the proper roles of Congress and the President in foreign policy. There were many statements during the public hearings, for example, about the rule of law. But the fundamental law of the land is the Constitution. Unconstitutional statutes violate the rule of law every bit as much as do willful violations of constitutional statutes. It is essential, therefore, to frame any discussion of what happened with a proper analysis of the Constitutional allocation of legislative and executive power in foreign affairs.

One point stands out from the historical record: the Constitution's Framers expected the President to be much more than a minister or clerk. The President was supposed to execute the laws, but that was only the beginning. He also was given important powers, independent of the legislature's, and these substantively were focused on foreign policy.

Our analysis will cover three chapters. The first will be about the debates in and around the Constitutional Convention of 1787 and will show the particular importance of what Alexander Hamilton called "energy in the executive" in this policy arena. The second reviews historical examples. It shows that, throughout the Nation's history, Congress has accepted substantial exercises of Presidential power—in the conduct of diplomacy, the use of force and covert action—which had no basis in statute and only a general basis in the Constitution itself. The third considers the applicable court cases and legal principles.

Taken together, the three chapters will show that much of what President Reagan did in his actions toward Nicaragua and Iran were constitutionally protected exercises of inherent Presidential powers. However unwise some of those actions may have been, the rule of law cannot permit Congress to usurp judgments that constitutionally are not its to make. It is true that the Constitution also gives substantial foreign policy powers to Congress, including the power of the purse. But the power of the purse—which forms the core of the majority argument—is not and was never intended to be a license for Congress to usurp Presidential powers and functions. Some of the statutes most central to the Iran-Contra Affair contain a mixture of constitutionally legitimate and illegitimate prohibitions. By the end of the three chapters, we will be in a position to start sorting them out.

"Necessary and Proper" and the "Invitation to Struggle"

In order to sort out constitutional from unconstitutional exercises of power, however, one first must have a basis, or a set of principles, to guide the sorting. It is a commonplace to note that foreign policy was meant to be shared between the branches. The two branches' respective powers clearly were meant to overlap somewhat, with each branch having different means for addressing parallel policy issues. This overlap led the respected Presidential scholar, Edward S. Corwin, to describe the Constitution as "an invitation to struggle for the privilege of directing American foreign policy." [1]

But to acknowledge the existence of a struggle is a far cry from seeing the Constitution as if it permits any branch to go after another's powers, without bounds. The boundless view of Congressional power began to take hold in the 1970's, in the wake of the Vietnam War. The 1972 Senate Foreign Relations Committee's report recommending the War Powers Act, and the 1974 report of the Select Committee on Intelligence Activities (chaired by Senator Frank Church and known as the Church Committee), both tried to support an all but unlimited Congressional power by invoking the "Necessary and Proper" clause. That clause says Congress may "make all Laws which shall be necessary and proper for carrying into Execution the foregoing [legislative] Powers, and all other Powers vested by this Constitution in the Government of the United States, *or in any Department or Officer thereof.*" The argument of these two prominent committees was that by granting Congress the power to make rules for the other departments, the Constitution meant to enshrine legislative supremacy except for those few activities explicitly reserved for the other branches.[2]

One must ignore 200 years of constitutional history to suggest that Congress has a vast reservoir of implied power whose only limits are the powers *explicitly* reserved to the other branches. It seems clear, for example, that Congress could not legislate away the Supreme Court's power of judicial review, even though judicial review is not mentioned explicitly in Article III. The same applies to the Presidency. The Necessary and Proper clause does not permit Congress to pass a law usurping Presidential power. A law negating Presidential power cannot be treated as if it were "necessary and proper for carrying" Presidential powers "into Execution." To suggest otherwise would smack of Orwellian Doublespeak.

The issue for this investigation, therefore, is not whether Congress and the President both have a legitimate role in foreign policy. Clearly, both do. Rather, the question is how to interpret the powers the two branches were given. All three of the Government's branches were given both express and implied powers. Congress does not have the authority to arrogate all of the implied power to itself. What we need to determine is whether these implied powers all fall into an undefined war zone, or whether there are theoretical and historical principles that allow one to decide when powers are more properly exercised by one branch or another.

Separation of Powers

One commonly held, but mistaken view of the separation of powers sees its whole function as having been preventive. Justice Louis D. Brandeis, for example, wrote that the "doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power." [3] His statement has been accepted in some Congressional quarters as if it holds the force of conventional wisdom,[4] but it misses half of the historical truth.

The fallacy of Brandeis' statement becomes apparent when one considers the defects of the U. S. Government before the Constitution. The Constitutional Convention, among other things, was taking the executive from being under the legislature's thumb, not the legislature from being under the executive's. After suffering through the Articles of Confederation (and various state constitutions) that had overcompensated for monarchy, the 1787 delegates wanted to empower a government, not enfeeble it. Brandeis was partly right to point out that the Framers did not want power to be used arbitrarily, and that checks and balances were among the means used to guard against arbitrariness. But the principles underlying separation had to do with increasing the Government's power as much as with checking it.[5]

For the Government to overcome the Articles' problems, the executive and judiciary had to act directly upon citizens throughout the far-flung new nation. As Charles Thach said in his classic study, "the delegates' chief concern was thus to secure an executive strong enough, not one weak enough." [6] The delegates did not want a monarchy, but felt they had no reason to fear such a threat as long as Members of Congress retained their independent political connection to the people. The problem was to make sure the other branches were not drawn, to use James Madison's word, into the legislature's "vortex." [7]

Constitutional Convention

The need for a strong Executive was not seen or articulated clearly at the beginning of the Constitutional Convention by all of the delegates. On June 1, 1787, in the first debate on the subject, Connecticut's Roger Sherman said "he considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect." [8] For that reason, Sherman supported the original Virginia Plan's provisions for the office. As submitted on the first day of the convention's substantive business on May 29, these included election by the legislature, no reeligibility for reelection and a short list of powers.

The Presidency grew considerably in stature between June 1 and September 17, the convention's last day. The leading strong Executive proponents, including James Wilson of Pennsylvania and Gouverneur Morris of New York, persuaded their colleagues to borrow key provisions from the New York State Constitution, whose independently powerful governor stood out from the much weaker executives in the other states. By the time the convention had finished, the Presidency (like the governorship of New York) was to be unified in one person who had an electoral base independent from the legislature's, who was allowed to run for reelection and who was given a qualified veto over legislative bills. With those changes in place, the delegates insured that the Presidency would not be the subservient clerkship originally envisioned by Sherman.

The President's enumerated powers were not discussed until the second half of the Constitutional Convention. For a week after the July 16 Great Compromise on legislative representation, the delegates debated the Presidency without reaching final conclusions. On July 26, they recessed to let a Committee of Detail work on a draft Constitution. At this point, the convention had only given the President the power to enforce laws, appoint officers, and exercise a qualified veto over legislation.

The Committee of Detail's report of August 6 listed specific powers for all three branches, significantly expanding the ones for the President. To the ones listed on July 26, the committee added the ability to recommend legislation, to receive ambassadors, to communicate with other heads of state and to act as commander in chief.[9]

Beyond these powers, however, the committee did not yet see the President as being preeminent in foreign policy. Reflecting the stake that small state delegates felt they had in the Senate, the committee gave the Senate the power to *make* treaties and *appoint* ambassadors and judges, and gave the full Congress the power to *make* war.

Over the next several weeks, all of these foreign policy decisions were modified to increase the President's power. On August 17, "Mr. Madison and Mr. Gerry moved to insert *'declare'*, striking out [Congress's power to] *'make'* war; leaving the Executive the power to repel sudden attacks." [10] This sentence is sometimes read by advocates of Congressional power as if the President was to be left *only* with the power to repel sudden attacks.[11] The next sentence muddies this interpretation substantially, however. Roger Sherman—the same delegate who was so suspicious of Executive power—said he would oppose the change because he interpreted it to mean the President was being given the power "to commence war." Oliver Ellsworth joined Sherman's reasoning, and Madison's notes (much skimpier for September than earlier) made George Mason's remarks inscrutable.[12] The motion was adopted, but an honest reading of these contradictory interpretations compels the conclusion that the scope of Executive power on this point was not settled. The President clearly was being given some discretion to use force without a declaration of war, but how much would have to be worked out in subsequent practice.

The treaty power was debated on August 23, but left unresolved.[13] On September 4, a Committee of Eleven reported a provision that said, "the President by and with the advice and consent of the Senate, shall have power to make Treaties; and he shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors", other public Ministers, judges and other officers not otherwise provided for in the Constitution. The votes of two-thirds of the Senators present were to be needed to ratify a treaty.[14] The provision for treaties was adopted with little recorded debate on September 7. James Wilson did move to require ratification to be shared by the House of Representatives, but the motion was defeated 1-10 after Sherman said "the necessity of secrecy in the case of treaties forbade a reference of them to the whole Legislature." [15] The delegates reduced the two-thirds requirement for advice and consent to a simple majority for treaties of peace, but reversed themselves the next day.[16] As with the war power, shifting the power to make treaties away from the Senate clearly was meant to expand the President's role—this time to take the lead in international negotiations. This expansion would parallel the President's sole authority to receive ambassadors and his authority to nominate ambassadors with advice and consent of the Senate. Once again, however, the exact scope of the relationship implied by the treaty power was left to be worked out in practice.

The Federalist Analysis of Political Principles

Although the convention left a great deal unsettled, that does not mean the Framers considered the distribution of foreign policy powers to be unimportant. "Problems of security and diplomacy were among the dominant preoccupations of the men who met at Philadelphia," wrote one legal scholar, "and first among their arguments for Union." [17] John Jay's four papers on foreign affairs come first in the *Federalist* and more than half of the papers in one way or another involve national security or foreign policy. In fact, one of the main differences between Federalists and Anti-Federalists during the whole ratification period turned on the Federalists' insistence that a strong national government was needed to meet foreign threats.[18] So the issues were aired at some length.

If we begin with the discussions about governmental institutions that were not specifically focused on foreign policy, we can see that there were some principles underlying the way powers were allocated to the various branches of government. There was some overlap, to be sure. "Unless these departments be so far connected and blended, as to give each a constitutional controul over the others," Madison wrote in *Federalist* No. 48, no checking or balancing could occur.[19] But the core of each branch's power centered upon tasks it was supposed to be best suited to perform.[20]

The primary concern the Framers had for the Congress was to create a body whose members—naturally concerned with the immediate concerns of their own districts—would be encouraged to debate and deliberate in the name of the national interest.[21] If deliberation was the key word for designing the legislature, energy, the ability to act, was the central concept for the Presidency. In describing the delegates' decision to have a single Executive and a numerous legislature, Alexander Hamilton wrote: "They have, with great propriety, considered energy as the most necessary qualification in the former, and have regarded this as most applicable to power in a single hand; while they have, with equal propriety, considered the latter as best adapted to deliberation." [22]

The need for an effective foreign policy, it turned out, was one of the main reasons the country needs an "energetic government," according to Alexander Hamilton in *Federalist* Nos. 22 and 23. Madison made the same point in No. 37: "Energy in Government is essential to that security against external and internal danger, and to that prompt and salutary execution of the laws, which enter into the very definition of good Government." [23] The relevance of these observations about the *government's* power is that the Framers saw energy as being primarily an executive branch characteristic.

Energy is the main theme of *Federalist* No. 70 ("energy in the executive is a leading character in the definition of good government.") It is said to be important primarily when "decision, activity, secrecy, and dispatch" were needed. These features are "essential to the protection of the community against foreign attacks." "In the conduct of war . . . the energy of the executive is the bulwark of national security." [24]

But war was not the only aspect of foreign policy described as being more appropriate for the executive than legislative branch. "The actual conduct of foreign negotiations, . . . the arrangement of the army and navy, the direction of the operations of war; these and other matters of a like nature constitute what seems to be most properly understood by the administration of government." [25] On negotiations, Hamilton went further to say that the Executive is "the *most fit* agent" for "foreign negotiations." [26]

In all of the quotations above, the *Federalist* was not treating powers as if they were randomly distributed. "Separated powers are not separated arbitrarily," writes one constitutional scholar.[27] "They are divided on principle, and not according to the prudential considerations of the moment," concludes another.[28] The responsibilities given each branch were the ones most suited to its composition. Activities requiring discussion and deliberation formed the heart of the legislature's job; those calling for "decision, activity, secrecy and dispatch" were the heart of the Executive's. The distribution of these characteristics among the branches would not by itself settle a dispute over the separation of powers. One could not, for example, challenge the existence of Congressional intelligence committees by saying that the *Federalist* called secrecy more of an Executive than a legislative trait. The analysis does show, however, that the Framers had solid reasons for placing the deployment and use of force (but not declarations of war), together with negotiations, intelligence gathering,[29] and other diplomatic communications (but not treaty ratification) at the center of the President's foreign policy powers. The principles underlying this distribution of powers should therefore be respected in constitutional interpretation, except where there are compelling reasons to suppose the Framers intended a different result.

We would be remiss if we failed to note that *Federalist* No. 70 gave two reasons for supporting unity in the Executive. So far, our discussion has concentrated on the first: the need for energy in the Executive. No government, democratic or otherwise, could long survive unless its Executive could respond to the uncertainties of international relations. But energy in the Executive seemed frightening to some people. To them, the Federalists made two responses. The first was that the Executive could not maintain a standing army, equip a navy, or engage in a large-scale use of force, without spending appropriated funds provided and controlled by the Congress.[30]

The second was that an independent, single Executive—in addition to being more energetic—would also be more responsible politically. It would be much easier to hold one person accountable than a committee.[31] In other words, giving the President some independent, inherent power was not seen as being undemocratic. The President and Congress both were considered to be representatives of the people. The Congress produced a more fitting result when the primary need was to moderate internal factional demands through discussion and deliberation before producing general rules. But foreign policy is dominated by case-by-case decisions, not general rules, and the aim is not to moderate internal pressures through deliberation, but to respond to external ones quickly and decisively. For these kinds of situations, multiple bodies—like Congress—are inherently unable to accept blame or responsibility for mistakes. Thus, despite the majority's contentions to the contrary, putting such decisions in the hands of the Congress was considered to be less democratic than giving them to the President, because there would be no way for the people to hold any one person accountable for a legislative decision.

Chapter 2 (Minority)

1. Edward S. Corwin, The President: Office and Powers (1957), p. 171.

2. U.S. Senate, 92d Cong., 2d Sess., Committee on Foreign Relations, War Powers, S. Rept. 92-606 to accompany S. 2956, (1972), p. 16; and U.S. Senate, 94th Cong., 2d Sess., Select Committee to Study Governmental Operations With Respect To Intelligence Activities, Final Report: Foreign and Military Intelligence, S. Rept. 94-755 (1976), Book I, p. 3.

3. *Myers* v. *United States* 272 U.S. 52, 293 (1926).

4. See, for example, U.S. Senate, 94th Cong., 2d Sess., Select Committee to Study Governmental Operations With Respect To Intelligence Activities, Final Report: Foreign and Military Intelligence, S. Rept. 94-755 (1976), Book I, p. 31.

5. See, for example, Louis Fisher, President and Congress: Power and Policy (1972) at 3: "I would not go so far as to claim that the framers' search for administrative efficiency, and their adoption of a separate executive for that purpose, represents the whole truth. Still, it is at least half the truth." See also L. Fisher, "The Efficiency Side of Separated Powers," 5 Journal of American Studies 113 (1971).

6. Charles C. Thach Jr., The Creation of the Presidency, 1775-1789 (1923), p. 77.

7. Alexander Hamilton, James Madison, and John Jay, The Federalist (Jacob Cooke, ed., 1961), No. 48, p. 333. Hereafter cited as Federalist.

8. Max Farrand, The Records of the Federal Convention of 1787 (1937), 4 vols., Vol. 1, p. 65. Hereafter cited as Farrand.

9. Farrand, II, 185.

10. Farrand, II, 318.

11. U.S. Senate, 92d Cong., 2d Sess., Committee on Foreign Relations, War Powers, S. Rept. 92-606 to accompany S. 2956 (1972), p. 4.

12. Farrand, II, 318-19.

13. Farrand, II, 392-94.

14. Farrand, II, 498-99.

15. Farrand, II, 538.

16. Farrand, II, 541, 549.

17. Eugene V. Rostow, "Great Cases Make Bad Law: The War Powers Act," 50 Texas L.Rev. 833, 845 (1972).

18. Nathan Tarcov, "The Federalists and Anti-Federalists on Foreign Affairs," 14 Teaching Political Science: Politics in Perspective 38 (Fall, 1986).

19. Federalist No. 48 at 332. William R. Davie made the same point in the North Carolina ratifying convention: "It is true, the great Montesquieu, and several other writers, have laid it down as a maxim not to be departed from, that the legislative, executive, and judicial powers should be separate and distinct. But the idea that these gentlemen had in view has been misconceived or misrepresented. An absolute and complete separation is not meant by them. It is impossible to form a government on these principles." Jonathan Elliot, ed. The Debates in the Several States on the Adoption of the Federal Constitution, 5 vols (1888), Vol. IV, p. 121.

20. See Ann Stuart Diamond, "The Zenith of Separation of Powers Theory: The Federal Convention of 1787," Publius, (Summer 1978) at 51.

21. Michael J. Malbin, "Congress During the Convention and Ratification," in L. Levy and D. Mahoney, eds., The Constitution: A History of its Framing and Ratification (1987); M. Malbin, "Factions and Incentives in Congress," 86 The Public Interest 91 (1987).

22. Federalist No. 70 at 472.

23. Federalist No. 37 at 233.

24. Federalist No. 70 at 471-72, 476.

25. Federalist No. 72 at 486-87.

26. Federalist No. 75 at 505, emphasis added.

27. Gary J. Schmitt, "Separation of Powers: Introduction to the Study of Executive Agreements," 27 The American Journal of Jurisprudence 114, 115 (1982).

28. Glen E. Thurow, "Presidential Discretion in Foreign Affairs," 7 Vanderbilt J. of Int'l. L. 71, 75 (1973).

29. Federalist No. 64 at 435.

30. Federalist No. 26 at 168; No. 41 at 273-74. We discuss the Constitutional limits on the appropriations power as a tool of foreign policy in the next chapter.

31. Federalist No. 70 at 476-77.

Chapter 3

The President's Foreign Policy Powers in Early Constitutional History

Our review of the Constitutional Convention concluded that the original document left a great deal to be worked out in practice. The *Federalist* does not change this conclusion. It does give us a theoretical basis, however, for seeing that the subsequent historical development of the President's foreign policy powers was no aberration. This is evident in the early development of diplomatic power, in presidential deployments of force, and in the use of secret agents for intelligence and covert activities.

Diplomacy

The major uncertainties affecting the President's ability to hold the initiative in negotiations and diplomatic communications were settled early. The President's role as the "sole organ" [1] of international communications was asserted unequivocally on October 9, 1789, when George Washington answered a letter that the King of France had addressed "to the President and Members of the General Congress" by saying that the task of receiving and answering such letters "has devolved upon me." Washington's interpretation was not based on the explicit words of Article II. Confirming this assertion, the Senate twice rejected motions to request the President to communicate messages on behalf of the United States.[2]

The related issue of whether the President may be required to give all requested information to Congress arose in a variety of foreign policy contexts during the Washington Administration. According to Abraham Sofaer's definitive study of the first forty years' practice under the Constitution, Washington repeatedly asserted, and Congress just as repeatedly accepted, a presidential right to withhold information the President thought should be kept secret. In 1794, for example, the Senate requested copies of the correspondence between our ambassador to France and the French Republic. Attorney General William Bradford wrote that "it is the duty of the Executive to withhold such parts of the said correspondence as in the judgment of the Executive shall be deemed unsafe and improper to be disclosed." Washington's response to the Senate clearly indicated that he was withholding some material, but the Senate took no further action.[3]

A year later, the Senate asked President Washington for John Jay's negotiating instructions and dispatches relating to the controversial Jay Treaty, "the first truly significant treaty completed under the new Constitution." [4] The issue here had to do not with the President's right to be the sole negotiator of treaties, but with what information Congress could insist on, after the fact, as a matter of right. Despite some advice to the contrary within his cabinet, Washington decided to give all requested information to the Senate. Thomas Jefferson, Washington's Secretary of State, made it clear later, however, that he considered the decision to have been a matter of political prudence rather than an acquiescence in a Senatorial right of advance consultation.[5]

When it was time for the House to consider implementing legislation for the Jay Treaty, Washington refused the same information—an action that provoked more than 300 pages of debate in the *Annals of Congress*. The President said he was refusing the request because the House had no role in ratifying treaties. The Cabinet, however, had also discussed a second reason for refusing to answer: the President's inherent power to decide what could, with safety, be shared. In a subsequent House debate, James Madison argued that the President should not be allowed to judge what was in the House's power, but supported the idea that the President could withhold papers if "in *his* judgment, it might not be consistent with the interest of the United States at this time to disclose." In other words, Madison was saying that each branch was the proper judge of its own constitutional powers. According to Sofaer, the debate showed "that members widely shared the view that the President had discretion to decline to furnish information requested. . . . Only one member . . . claimed that the House had an absolute right to obtain information it sought." [6]

In addition to negotiating treaties, and sharing information about them with Congress, there was a major dispute during the Washington Administration about subsequent interpretation and implementation. After war broke out between France and England in 1793, Washington decided to issue his famous Proclamation of Neutrality. Public sentiment was in favor of having the United States support France, a course that arguably would have been consistent with a 1778 Treaty of Alliance between the United States and France. Washington was convinced, however, that taking sides in the war would be disastrous. He took the position that it was up to him, as President, to interpret the country's treaty obligations when he felt those obligations did not require him to ask Congress for a declaration of war. For eight months, Washington implemented his policy without asking Congress to convene for a special session.

One of the truly remarkable aspects of the decision was that, in addition to its assertion of the President's unilateral power to set policy, Washington claimed that he could use military force, if necessary, to prevent violations of the policy outside the United States by privateers and by people who helped outfit them, and that he could treat violations within the United States as criminal acts under the common law. Although unrelated concerns about common law crimes and the difficulty of winning jury convictions led to the first Congressional Neutrality Act, there was never any doubt about Washington's authority to enforce his policy of neutrality abroad.

Washington's proclamation also occasioned one of the great public debates over executive power in the Nation's history. About two and a half months after the proclamation, Hamilton published the first of a series of papers under the pseudonym of Pacificus. The main constitutional issue of the day was whether Congress' power to declare war carried with it the power to declare peace, or to determine whether U.S. treaty obligations with France required supporting that country in its war with England. Hamilton argued that these powers must "of necessity belong to the Executive Department." [7] His reasoning was as follows:

> It appears to be connected to that department in various capacities, as the *organ* of intercourse between the Nation and foreign Nations—as the interpreter of the National Treaties in those cases in which the Judiciary is not competent, that is between Government and Government—as that Power, which is charged with the Execution of the Laws, of which treaties form a part—as that Power which is charged with the application of the Public Force.
>
> That view of the subject is so natural and obvious—so analogous to general theory and practice—that no doubt can be entertained of its justness, unless such doubt can be deduced from particular provisions of the Constitution.[8]

At this point, Hamilton turned his attention to the texts of Articles I and II, and particularly to the general clauses introducing each of them.

> The second Article of the Constitution of the United States, section 1st, establishes this general Proposition, That "The EXECUTIVE POWER shall be vested in a President of the United States of America."
>
> The same article in a succeeding Section proceeds to designate particular cases of Executive Power . . . .
>
> It would not consist with the rules of sound construction to consider this enumeration of particular authorities as derogating from the more comprehensive grant contained in the general clause, further than as it may be coupled with express restrictions or qualifications . . . . Because the difficulty of a complete and perfect specification of all the cases of Executive authority would naturally dictate the use of general terms—and would render it improbable that a specification of particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the constitution in regard to the two powers the Legislative and the Executive serves to confirm this inference. In the article which grants the legislative powers of the Governt. the expressions are—"All Legislative powers *herein granted* shall be vested in a Congress of the United States;" in that which grants the Executive Power the expressions are, as already quoted, "The EXECUTIVE PO[WER] shall be vested in a President of the United States of America". . . .
>
> The general doctrine then of our constitution is that the EXECUTIVE POWER of the Nation is vested in the President; subject only to the *exceptions* and *qu[a]lifications* which are expressed in the instrument . . . .
>
> This mode of construing the Constitution has indeed been recognized by Congress in formal acts, upon full consideration and debate. The power of removal from office is an important instance.[9]

Thomas Jefferson, Washington's Secretary of State, joined the other members of the Cabinet in supporting the President's proclamation. He became upset, however, at *Pacificus'* arguments for executive power, and urged his friend, James Madison, to write a reply. The results were published under the pseudonym of *Helvidius.*

> To see the laws faithfully executed constitutes the essence of the executive authority. But what relation does it have to the power of making treaties and war, that is, of determining what the *laws shall be* with regard to other nations? . . . .
>
> By whatever standard we try this doctrine, it must be condemned as no less vicious in theory than it would be dangerous in practice . . . .

> Whence can the writer have borrowed it?
>
> There is but one answer to this question.
>
> The power of making treaties and the power of declaring war, are *royal prerogatives* in the *British government*, and are accordingly treated as *executive prerogatives* by British *commentators*.[10]

Interestingly, a letter Madison wrote to Jefferson shows that he was extremely reluctant to take on the task.[11] On an earlier occasion when he was supporting the removal power, Madison had described the executive power in terms much closer to Hamilton's.

> The constitution affirms that the executive power shall be vested in the president. Are there exceptions to this proposition? Yes, there are. The constitution says that, in appointing to office, the senate shall be associated with the president, unless in the case of inferior officers, when the law shall otherwise direct. Have we [in Congress] a right to extend this exception? I believe not. If the constitution has invested all the executive power in the president, I venture to assert, that the legislature has no right to diminish or modify his executive authority.[12]

Whatever one may want to say about Madison's narrow construction of Presidential power in the role of *Helvidius*, there can be little doubt that the history of the years and decades immediately following Washington's assertions of broad power, developed more along lines envisioned by *Pacificus*. Sofaer's review of the Washington administration ended by observing that "the framework for executive-congressional relations developed during the first eight years differs more in degree than in kind from the present framework." [13] At least as important as the first eight years, however, was the fact that this framework was maintained by Jefferson and his successors, despite their public identification during the years the Federalists held power with the *Helvidius* view of the Presidency.

One constitutional dispute early in the Jefferson Administration was over the Louisiana Purchase. What would the party whose adherents had insisted on a Senate role in negotiating the Jay Treaty say about the President's power to negotiate the Purchase? Jefferson's Secretary of State Albert Gallatin supported the Louisiana Purchase by saying that the purchase eventually would have to be ratified by treaty and that its negotiation therefore belonged to the President under the Constitution. Jefferson did not embrace Gallatin's constitutional argument. Instead, the President decided to go through with the Purchase, without abandoning his view that the Constitution severely limited the President, by asserting an inherent, *extra*constitutional prerogative power for the Executive that was more sweeping than anything Hamilton had ever put forward. Jefferson justified his decision this way:

> A strict observance of the written law is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself . . . absurdly sacrificing the end to the means.[14]

One of the remarkable aspects of Jefferson's assertion is the stark way in which it poses a fundamental constitutional issue. Chief Executives are given the responsibility for acting to respond to crises or emergencies. To the extent that the Constitution and laws are read narrowly, as Jefferson wished, the Chief Executive will on occasion feel duty bound to assert monarchical notions of prerogative that will permit him to exceed the law. Paradoxically, the broader Hamiltonian ideas about executive power—by being more attuned to the realistic dangers of foreign policy—seem more likely to produce an Executive who is able and willing to live within legal boundaries. Thus, the constitutional construction that on the surface looks more dangerous seems on reflection to be safer in the long run.

After Jefferson, the notion of executive prerogative was put on the shelf. Instead, Jeffersonian Presidents began asserting Hamiltonian ideas about executive power. Although we will discuss the use of force separately below, Sofaer's comment on the post-Jeffersonians bears quotation here:

> Although Presidents during this period claimed no inherent authority to initiate military actions, Madison [departing from the theory of the Helvidius papers] and particularly Monroe secretly used their powers in ways that could have been justified only by some sweeping and vague claim—such as the right to use the armed forces to advance the interests of the United States.[15]

The reason such inherent presidential power was exercised in this period, and later, was not mysterious. The exercise grew out of the character of foreign policy and of the offices the Constitution had created. As Gary Schmitt put it in an article about Jefferson:

> To some extent, the enumerated powers found in Article II are deceiving in that they appear understated. By themselves, they do not explain the particular primacy the presidency has had in the governmental system since 1789. What helps to explain this fact is the presidency's radically different institutional characteristics, especially its unity of office. Because of its unique features, it enjoys—as the framers largely intended—the capacity of acting with the greatest expedition, se-

> crecy and effective knowledge. As a result, when certain stresses, particularly in the area of foreign affairs, are placed on the nation, it will "naturally" rise to the forefront.[16]

These stresses are particularly evident when it is time to use force or engage in secret diplomacy or covert actions.

We close this section on diplomacy by relating it to some of the issues of the Iran-Contra investigation. Some Members of these Committees seem to have taken the positions (1) that Congress can require the President to notify it whenever the President prepares or begins to conduct secret negotiations or covert operations, whatever the circumstances, and/or (2) that Congress may constitutionally use its appropriations power to prohibit certain forms of communication between the President (or the President's employees in the White House and State Department) and other governments or private individuals. We consider negotiations and communications with foreign governments or individuals to be Presidential powers protected by the Constitution, without reservation. They fall comfortably within precedents established during the Washington Administration which have never been successfully challenged since. The constitutional validity of withholding information about sensitive, covert operations involves additional considerations that will be discussed separately later.

Use of Force

We do not intend to turn this report into an argument about war powers. We have no doubt that we disagree with some of our esteemed colleagues on this issue, but there is no point in getting sidetracked. Nevertheless, we consider it important to say something about the power Presidents traditionally have exercised under the Constitution, to use force with and without prior congressional authorization. This history clearly supports our basic contention that the Constitution expected the President to be much more than a clerk. It will also provide a context for discussing the less drastic projections of U.S. power that fit under the rubric of covert action.

In its 1973 hearings on the War Powers Resolution, the House Foreign Affairs Subcommittee on National Security Policy and Scientific Developments published a list of 199 U.S. military hostilities which occurred abroad without a declaration of war.[17] (The five declarations of war in the Nation's history were for the War of 1812, Mexican War, Spanish-American War, World War I, and World War II.) The list was a revision of one published the year before in a law review article by J.T. Emerson.[18] Of the 199 listed actions, only 81 could be said under any stretch of the imagination to have been initiated under prior legislative authority. The 81 included 51 undertaken under treaties, many of which left substantial room for interpretation. In addition, many of the remaining actions were undertaken with only the vaguest statutory authority. President Jefferson's five-year campaign against the Barbary States, for example, was justified by the claim that Congress' general decision to provide a navy carried with it the authority to deploy the navy whereever the President wished, including a theater in which the President had every reason to expect hostilities.

The point here is not to quibble about the 81 occasions the subcommittee described as having had prior congressional authorization. Rather, it is to show that the list made every effort to include all examples for which some kind of prior congressional authorization could arguably have been claimed. That leaves an extremely conservative number of 118 other occasions without prior legislative authorization. What follows is a sampler of the 118 actions taken solely on executive authority. The descriptive language below is paraphrased from the subcommittee exhibit cited above.

—In 1810, Governor Claiborne of Louisiana, on the sole order of the President, used troops to occupy disputed territory east of the Mississippi.

—During the "First Seminole War," 1816–18, U.S. forces invaded Spanish Florida on two occasions. In the first action they destroyed a Spanish fort. In the second they attacked hostile Seminole Indians, occupying Spanish posts believed to have served as havens. President Monroe assumed responsibility for these acts.

—In 1818, the U.S.S. Ontario landed at the Columbia River and took possession of Oregon, which was also claimed by Russia and Spain.

—In 1844, President Tyler deployed forces to protect Texas against Mexico, anticipating Senate approval of a treaty of annexation. The treaty was later rejected.

—In 1846, President Polk ordered General Scott to occupy disputed territory months before a declaration of war. The troops engaged in battle when Mexican forces entered the area between the Nueces and Rio Grande Rivers. The fighting occurred three days before Congress acted.

—In 1853–54, Commodore Matthew C. Perry led an expedition to Japan to negotiate a commercial treaty. Four hundred armed men accompanied Perry and landed with him at Edo Bay in July, 1853, where he stayed ten days after being told to leave. He then sailed south and took possession of the Bonin Islands. In March 1854, he returned to Edo Bay with 10 ships and 2,000 men. He landed with 500 men and signed a treaty after a six-week campaign. The whole campaign was on executive authority.

—In late 1865, General Sherman was sent to the Mexican border with 50,000 troops to back up the protest made by Secretary of State Seward to Napoleon III that the presence of 25,000 French troops in

Mexico "is a serious concern." The troops remained until February 1866, when Seward demanded a definite date for French withdrawal and France complied.

—In 1869-71, President Grant sent a naval force to the Dominican Republic to protect it from invasion while the Senate considered a treaty of annexation. The Senate rejected the treaty, but the naval force stayed in place for months afterwards.

—Between 1874 and 1915, U.S. forces were put ashore on 29 different occasions to protect American lives or interests in places as diverse as Hawaii, Mexico, Egypt, Korea, Argentina, Chile, Nicaragua, China, Colombia (Panama), Dominican Republic, Syria, Abyssinia, Morocco, Honduras, Turkey and Haiti.

—Between 1915 and 1934, the United States placed Haiti under U.S. military and financial administration. The occupation was sanctioned by a treaty ratified by the Senate in February 1916, but the first months of the occupation were on Executive authority.

—In February 1917, President Wilson asked Congress for authority to arm U.S. merchant vessels. Congress refused and Wilson acted on his own authority to provide the ships with guns.

—In 1918-20, after signing the Armistice for World War I, U.S. troops participated in Allied anti-Bolshevik military actions in Russia.

—Between 1926 and 1933, 5,000 U.S. troops were in Nicaragua at the request of the government during the period of Sandino's attempted revolution. Congressional Democrats opposed President Coolidge's decisions but did not question his authority.

—On September 3, 1940, President Roosevelt informed Congress that he had agreed to deliver a flotilla of destroyers to Great Britain in return for a series of military bases on British soil along the Western Atlantic.

—In April 1941, after the German invasion of Denmark, the U.S. Army occupied Greenland under agreement with local authorities. The action appears to have been contrary to an express congressional limitation.

—On July 7, 1941, U.S. troops occupied Iceland. Congress was notified the same day but was not consulted in advance. The Reserves Act of 1940 and the Selective Service Act of 1940 both provided that U.S. troops could not be used outside the Western Hemisphere.

--By July 7, 1941, President Roosevelt had ordered U.S. warships to convoy supplies sent to Europe to protect military aid to Britain and Russia. By September, the ships were attacking German submarines.

—In July 1946, during an Italian-Yugoslav border dispute in the Trieste area, President Truman ordered U.S. Naval units to the scene. After the Yugoslavs shot down U.S. transport planes in August, Truman ordered U.S. troops and air forces to be augmented. Five thousand U.S. troops remained in Trieste as late as 1948.

—Between 1948 and 1960, U.S. forces were deployed to evacuate, protect or be ready to protect U.S. lives in or near Palestine, China, Egypt, Indonesia, Venezuela, and Cuba.

—In October 1962, President Kennedy ordered a naval "quarantine" of Cuba during the Cuban Missile Crisis.

—On April 24, 1965, a revolt broke out in the Dominican Republic, and on April 28 President Johnson sent American troops. The announced purpose was to protect American lives. At the peak of the action, 21,500 U.S. troops were in the Dominican Republic. An Inter-American Peace Force began arriving on May 21 and stayed through the year.

—On September 17, 1970, King Hussein of Jordan moved against the Palestine Liberation Organization. Syria sent 300 tanks across the Jordanian border and President Nixon ordered the United States Sixth Fleet to deploy off the Lebanese-Israeli coast. The United States apparently was prepared to intervene to prevent Hussein's overthrow. Syrian tanks began withdrawing on September 22 and Hussein and PLO leader Yassir Arafat agreed to a cease-fire on September 25.

As should be obvious from all of these examples, Presidents from the earliest history of the United States have not limited themselves to a Roger Sherman-like limited conception of their job. Neither have they felt, as they have deployed force without congressional authorization, that their actions had to be limited to hot pursuit, repelling attacks or protecting American lives. Until recently, the Congress did not even question the President's authority.

The relevance of these repeated examples of the extensive use of armed force, therefore, is that they indicate how far the President's inherent powers were assumed to have reached when Congress was silent, and even, in some cases, where Congress had prohibited an action. We shall show later that most of the Reagan Administration's actions in Central America in fact were not covered by statute. They therefore fall constitutionally under the heading of unauthorized, but also unprohibited actions. As shown above, Presidents historically have had not only the power to negotiate and communicate, but also to deploy force overtly—sometimes for major campaigns involving significant losses of life—without Congressional approval. The Reagan Administration did not even come remotely close to this level of activity in its support of the democratic resistance in Nicaragua.

Intelligence and Covert Actions

We end this review of historical precedent with a brief overview of intelligence and covert actions authorized by past Presidents. That history begins in the earliest days of the Nation. As Representative Hyde mentioned during Admiral Poindexter's testimony on July 17,[19] the Continental Congress—which did not have a separate executive branch—set up a Committee of Secret Correspondence made up of Benjamin Franklin, Robert Morris, Benjamin Harrison, John Dickinson and John Jay. On October 1, 1776, Franklin and Morris were told that France would be willing to extend credit to the revolutionaries to help them buy arms. They wrote:

> Considering the nature and importance of [the above intelligence,] we agree in opinion that it is our indispensable duty to keep it a secret from Congress. . . . As the court of France has taken measures to negotiate this loan in the most cautious and secret manner, should we divulge it immediately we may not only lose the present benefit but also render the court cautious of any further connection with such unguarded people and prevent their granting other loans of assistance that we stand in need of.[20]

In a subsequent chapter on leaks, we shall discuss the methods this committee used to protect secrets, some of which should be revived today.

The *Federalist* also recognized the important role intelligence might play under the new Constitution. *Federalist* No. 64, about treaties, was written by Jay, an experienced diplomat as well as a former member of the Committee on Secret Correspondence. He said:

> It seldom happens in the negotiation of treaties, of whatever nature, but that perfect *secrecy* and immediate *dispatch* are sometimes requisite. There are cases when the most useful intelligence may be obtained, if the person possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there are doubtless many of both descriptions who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular assembly. The convention have done well therefore in so disposing of the power of making treaties, that although the President must in forming them act by the advice and consent of the senate, yet he will be able to manage the business of intelligence in such manner as prudence may suggest.[21]

Beginning with George Washington, almost every President has used "special agents"—people, often private individuals, appointed for missions by the President without Senate confirmation—to help gain the intelligence about which Jay wrote, and to engage in a broad range of other activities with or against foreign countries. The first such agent was Gouverneur Morris, who was sent to Great Britain in 1789 to explore the chances for opening normal diplomatic communications.[22] At the same time, Britain sent a "private agent" to the United States who communicated outside normal channels through Secretary of Treasury Alexander Hamilton instead of through the Francophile Secretary of State, Thomas Jefferson.[23] Washington's agents were paid from a "secret service" fund he was allowed to use at his discretion, without detailed accounting.[24]

The early examples that are most interesting for these investigations are ones in which the President used his discretionary power to authorize covert actions. ("Covert action" is an inexact term generally recognized to include covert political action, covert propaganda, intelligence deception, and covert paramilitary assistance.) In the period of 1810–12, for example, Madison used agents to stimulate revolts in East and West Florida that eventually led to an overt, Congressionally unauthorized military force to gain U.S. control over territories held by a country with which the United States was at peace. Even more telling, however, is the following example from the Madison Administration.

> Madison [in 1810] sent Joel R. Poinsett, secretly and without Senate approval, to South America as an agent for seamen and commerce. Poinsett did some commercial work, but he broadly construed instructions from Secretaries of State Smith and Monroe, and worked intimately with revolutionary leaders in Argentina and Chile, suggesting commercial and military plans, helping them obtain arms, and actually leading a division of the Chilean army against Peruvian loyalists. Nothing in Poinsett's instructions specifically authorized these activities. But he had kept the administration advised of most of his plans and received virtually no directions for long periods of time, and no orders to refrain in any way from aiding the revolutionaries . . . . Poinsett was given broad leeway to advance the republican cause, without any commitment from the administration. He was told to write in code, and all his important communications were withheld from Congress.[25]

In other words, Poinsett made Oliver North look like a piker.

In 1843, President Tyler secretly sent Duff Green to Great Britain to engage in secret propaganda activities relating to the U.S. desire to annex Texas. At one point, Green had a letter published in a newspaper without using his own name. This raised a furor among members of Congress, several of whom demanded to know his identity. Because Green was paid out of the President's contingency fund, Congress made the fund an issue during the subsequent administration of President Polk. Polk refused to disclose his expenditures in a statement that openly acknowledged they were being used for more than intelligence gathering:

> In no nation is the application of such funds to be made public. In time of war or impending danger the situation of the country will make it necessary to employ individuals for the purpose of obtaining information *or rendering other important services* who could never be prevailed upon to act if they entertained the least apprehension that their names or their agency would in any contingency be revealed.[26]

One early example of a covert action brought to an end through a leak is described in Edward Sayle's article on the history of U.S. intelligence:

> President Pierce, as Polk, made extensive use of agents and covert action. One of the most innovative plans was to acquire Cuba from Spain. Spain had refused to part with the troublesome island, and a scheme was devised to force them to sell. It called for cooperative European money-lenders to call in their loans to the Spanish Crown, pressuring Madrid to sell Cuba to the United States as a means to raise the needed cash. The plan went well until leaked to the *New York Herald.*[27]

Examples like these are legion. During the country's first century, Presidents used literally hundreds of secret agents at their own discretion. Congress did give the President a contingency fund for these agents, but never specifically approved, or was asked to approve any particular agent or activity. In fact, Congress never approved or was asked to approve covert activity in general. The Presidents were simply using their inherent executive powers under Article II of the Constitution. For the Congresses that had accepted the overt presidential uses of military force summarized in the previous section, the use of Executive power for these kinds of covert activities raised no constitutional questions.

Conclusion

Presidents asserted their constitutional independence from Congress early. They engaged in secret diplomacy and intelligence activities, and refused to share the results with Congress if they saw fit. They unilaterally established U.S. military and diplomatic policy with respect to foreign belligerent states, in quarrels involving the United States, and in quarrels involving only third parties. They enforced this policy abroad, using force if necessary. They engaged U.S. troops abroad to serve American interests without congressional approval, and in a number of cases apparently against explicit directions from Congress. They also had agents engage in what would commonly be referred to as covert actions, again without Congressional approval. In short, Presidents exercised a broad range of foreign policy powers for which they neither sought nor received Congressional sanction through statute.

This history speaks volumes about the Constitution's allocation of powers between the branches. It leaves little, if any, doubt that the President was expected to have the primary role of conducting the foreign policy of the United States. Congressional actions to limit the President in this area therefore should be reviewed with a considerable degree of skepticism. If they interfere with core presidential foreign policy functions, they should be struck down. Moreover, the lesson of our constitutional history is that doubtful cases should be decided in favor of the President.[28]

Endnotes

1. This phrase, commonly used in contemporary debates over the President's foreign policy powers, originated in Alexander Hamilton's Pacificus papers, was used by John Marshall in a House floor debate in 1800, and then reappeared in the Supreme Court case of *U.S.* v. *Curtiss-Wright.* See Alexander Hamilton, Papers, H. Syrett, ed., Vol. XV, pp. 37-38 (1969); 10 Annals of Congress 613 (1800); *U.S.* v. *Curtiss-Wright Export Corp.* 299 U.S. 304, 319-20 (1936).

2. Abraham D. Sofaer, War, Foreign Affairs and Constitutional Power (1976), p. 94.

3. Sofaer at 83-85.

4. Gary Schmitt, "Executive Privilege," in J. Bessette and J. Tulis, eds. The Presidency in the Constitutional Order (1981) 154, 187 n.38.

5. Thomas Jefferson, Writings, 10 vols., Paul L. Ford, ed. (1892-99), Vol. 1, p. 294; cited in Gary Schmitt, "Jefferson and Executive Power: Revisionism and the 'Revolution of 1800' ", 17 Publius 7,15 (1987).

6. This debate is analyzed by Sofaer at 85-93. The Madison quotation is at 87 and the Sofaer quotation is at 88.

7. Hamilton, Papers, XV at 38.

8. *Id.*

9. *Id.* at 38-40. Hamilton's reference is to the extensive debate in the First Congress in the bill establishing the Department of State that resulted in a close vote rejecting the idea that Senate advice and consent should be needed to remove people from office whose appointment had depended upon Senate confirmation.

10. James Madison, Writings, G. Hunt ed. (1906), VI, 149-50.

11. *Id.* at 138-39.

12. As quoted in Edward S. Corwin, The President's Control of Foreign Relations (1917) at 29.

13. Sofaer at 127.

14. Jefferson, Writings, Vol. 9, p. 279.

15. Sofaer at 378.

16. Schmitt, "Jefferson and Executive Power," at 23, n. 29.

17. U.S. House of Representatives, Committee on Foreign Affairs, 93rd Cong., 1st Sess., War Powers, Hearings Before the Subcommittee on National Security Policy and Scientific Developments, Exhibit II, pp. 328-376 (1973).

18. J.T. Emerson, "War Powers Legislation," 74 W.Va.L.Rev. 53, 88-119 (1972).

19. Hearings, July 17, pp. 205-07.

20. Revolutionary Diplomatic Correspondence of the United States, October 1, 1776.

21. Federalist No. 64 at 434-35, emphasis in the original.

22. U.S. Senate, 94th Cong., 2d Sess., Select Committee to Study Governmental Operations With Respect To Intelligence Activities, Final Report: Foreign and Military Intelligence, S.Rept. 94-755 (1976), Book I, p.34.

23. Leonard D. White, The Federalists: A Study in Administrative History, 1789-1801 (1948), pp. 212-13.

24. 1 Stat. 128-29. See also, L. White, The Federalists at 343; Sayle, "Historical Underpinnings," at 9.

25. Sofaer, War, Foreign Affairs and the Constitution at 264-65.

26. As quoted by Sayle, "Historical Underpinnings," at 15.

27. Sayle, "Historical Underpinnings," at 16.

28. See letter from John Norton Moore to Brendan Sullivan, July 9, 1987, p. 2, reprinted at the end of the minority report.

Chapter 4

Constitutional Principles In Court

The historical examples given in the preceding section point the way toward a proper understanding of the Executive's foreign policy powers as those powers have evolved under the Constitution. The assertion by Presidents, and the acceptance by Congress, of inherent presidential powers in foreign policy were the normal practice in American history before the 1970s, not an aberration. The history therefore creates a strong presumption against any new constitutional interpretation that would run counter to the operative understanding in the legislative and executive branches that has endured from the beginning.

The Supreme Court has used history in just such a presumptive way. In the Opinion of the Court in the "flexible tariff" delegation case of *Field* v. *Clark*, Justice Harlan wrote:

> The practical construction of the Constitution, as given by so many acts of Congress [involving similar delegations], and embracing almost the entire period of our national existence, should not be overruled unless upon a conviction that such legislation was clearly incompatible with the law of the land.[1]

The point of this quotation is not that historical usage must slavishly be followed. Rather, it is that historical precedents—especially ones that began almost immediately, with the support of many who participated in the 1787 Convention—carry a great deal of weight in any discussion about what the Constitution was supposed to mean in the real world of government.

The historical examples clearly undermine the position of the staunchest proponents of Congressional power: that Presidents were intended to be ministerial clerks, whose only authority (except for subjects explicitly mentioned in Article II) must come from Congress. But that still leaves two other possibilities that must be considered when judging the constitutional validity of executive action. One is that a particular exercise of presidential power may have been acceptable in the past only because Congress had not yet spoken on the subject. The other is that at least some exercises of implied power (i.e., power not explicitly stated in Article II) are so central to the office that they remain beyond the constitutional reach of legislative prohibition. The Supreme Court precedents discussed below show that many of the major Iran-Contra actions undertaken by President Reagan, his staff, and other executive branch officials, fall into the constitutionally protected category.

The Steel Seizure Case and Inherent Presidential Power

Justice Robert Jackson's concurring opinion in the *Steel Seizure Case (Youngstown Sheet and Tube Co.* v. *Sawyer)* is often used as a basis for outlining the logically possible constitutional relationships between legislative and executive power. In the case's most famous dictum, Jackson wrote:

> We may well begin by a somewhat over-simplified grouping of practical situations in which a President may doubt, or others may challenge, his powers, and by distinguishing roughly the legal consequences of this factor of relativity.
>
> 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all Congress can delegate . . . .
>
> 2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain . . . .
>
> 3. When the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject.[2]

The major issues in the Iran-Contra investigation have to do with incidents about which Congress ostensibly has spoken. In other words, putting aside issues of statutory construction to be argued in later chapters, they all fall into Jackson's third category, the one where presidential power is supposedly at its weakest. Even in this category, however, Jackson conceded that Congress is "disabled" from interfering with some matters.

Later in the same opinion, Jackson distinguished between situations in which an exercise of power is turned outward, as it is in most pure foreign policy matters, and those on which it is turned inward, as it was in the labor-management dispute involved in the *Steel Seizure Case*:

> I should indulge the widest latitude of interpretation to sustain his [the President's] exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society. But, when it is turned inward, not because of rebellion but because of a lawful economic dispute between industry and labor, it should have no such indulgence.[3]

Jackson's opinion was cited with approval by a unanimous court in *Dames & Moore* v. *Regan*, a case that grew out of a claim against Iranian assets frozen by President Carter during the hostage crisis of 1979-81.[4] In the same *Dames & Moore* opinion, however, Justice Rehnquist was careful to say: "We attempt to lay down no general 'guidelines' covering other situations not involved here."[5] Immediately after this statement, and just before the reference to Jackson, Rehnquist also quoted with approval a famous passage from the 1936 case of *U.S.* v. *Curtiss-Wright Export Corp.*:

> [W]e are dealing here not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution.[6]

Taken together, therefore, the *Steel Seizure Case*, *Dames & Moore* v. *Regan* and *U.S.* v. *Curtiss-Wright* stand for the following propositions: The President does not have plenary power to do whatever he wants in foreign policy; Congress does have some legislative powers in the field. However, there are some foreign policy matters over which the President is the "sole organ" of government and Congress may not impinge upon them.

The Holding of the Curtiss-Wright Decision

Before we apply these general constitutional principles to the events in these investigations, we should first expand upon the authority of *U.S.* v. *Curtiss-Wright*. That case involved a challenge to a congressional resolution that specified criminal penalties to be invoked against arms merchants if the President should determine and proclaim that prohibiting arms sales would promote peace in a conflict in the Chaco in Bolivia. Because Congress had passed a resolution specifying what would happen if, and only if, the President issued a proclamation, the case is sometimes dismissed as if its statements confirming inherent presidential power in foreign affairs were *obiter dicta* having no value as precedent.

This misreading of *Curtiss-Wright* is based on a misunderstanding of the importance of the main issue of the case in the legal history of the New Deal. The Curtiss-Wright Corporation had challenged the law as permitting criminal penalties to be based on an executive action, a proclamation, that was not guided by clear standards specifying the conditions under which the proclamation should or should not be issued. The challenge, in other words, was that the law involved an excessively broad, standardless delegation by Congress of its own legislative power.[*]

Delegation was very much of a live issue at the time of *Curtiss-Wright*. In the two years before this case, the Supreme Court in three separate decisions—and for the only three times in the country's history before or since—used the concept of excessive, standardless delegation to declare some of the main pieces of New Deal legislation to be unconstitutional.[7] Because the joint resolution concerning Bolivia contained no more precise standards than the ones in the statutes the Court had just overturned, there was no way for the Court to uphold the Bolivian resolution without either abandoning its recently adopted tough stance on delegation, or somehow distinguishing this case from the others. The Court's statements about the President's inherent foreign policy powers therefore were crucial to its final decision.

The differences between the President's and Congress's powers over domestic and foreign policy made up the bulk of Justice Sutherland's opinion for the Court in *Curtiss-Wright*. When it came time to show the relevance of these differences for the delegation issue, Sutherland used a quotation from Chief Justice Hughes's Opinion of the Court in the first of the three preceding delegation decisions, *Panama Refining Co.* v. *Ryan.* In the *Panama Refining* case, the Court invalidated a major New Deal law, the National Industrial Recovery Act, by saying that the NIRA involved an excessively broad delegation. In order to support the decision, however, the Court felt that it had to distinguish the NIRA from a string of earlier statutes, beginning with the Neutrality Act of 1794, that had been upheld despite seeming to contain similarly broad delegations. What the Court said in *Panama Refining* was that the Neutrality Act and the other previously upheld statutes had "confided to the President, for the purposes and under the conditions stated, an authority which was *cognate to* the conduct by him of the foreign relations of the government."[8] By saying this, the Court was indicating that the lack of inherent and "cognate" constitutional powers in the sphere of domestic policy meant that the Court should apply a more rigorous delegation standard that it had for foreign policy.

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[*] Because it has been fifty years since the Supreme Court overturned an act of Congress solely because of excessive delegation, people today tend to overlook the issue's past importance. The doctrine remains on the books, but in the words of administrative law specialist Kenneth Culp Davis, it has become a collection of words "without practical effect." See Kenneth Culp Davis, *Administrative Law and Government* (2d ed., 1975) at 39.

In *Curtiss-Wright,* the Court was saying that President Roosevelt had his own, inherent power to issue a statement of neutrality in the Bolivian conflict, and even use force to implement it abroad, just as Washington had in 1794. If the President wanted to go beyond proclamations to impose criminal law sanctions on U.S. citizens for domestic acts, however, congressional authority would be needed.*

The need for legislation before *criminal* sanctions could be imposed for *domestic* activity in turn brought the delegation issue into play. In *Curtiss-Wright,* the court held that solely *because* the President is the sole organ of the country's foreign relations, Congress does not have to spell out the conditions under which a Presidential proclamation may invoke criminal sanctions with the same precision as it must to meet constitutional standards in a case of domestic policy. The underlying premises about the President's foreign policy powers thus were essential to the holding in *Curtiss-Wright,* and have never been challenged or abandoned by subsequent Supreme Courts. Justice Jackson's recognition in *The Steel Seizure Case* that some areas of Presidential authority are beyond Congress's reach, and the 1981 Supreme Court invocation of both *Curtiss-Wright* and Jackson in the previously mentioned *Dames & Moore* case make this abundantly clear.

The President as the "Sole Organ" for Diplomacy

We have shown that the Constitution gives the President some power to act on his own in foreign affairs. What kinds of activities are set aside for him? The most obvious—other than the Commander-in-Chief power and others explicitly listed in Article II—is the one named in *Curtiss-Wright*: the President is the "sole organ" of the government in foreign affairs. That is, the President and his agents are the country's eyes and ears in negotiation, intelligence sharing and other forms of communication with the rest of the world.

This view has a long and until recently unchallenged history. As was mentioned in the earlier historical section, the phrase originated in Alexander Hamilton's *Pacificus* papers of 1793 and was used by John Marshall in a House floor debate in 1800. The 1860 lower court decision of *Durand* v. *Hollins* described the President as "the only legitimate organ of the government, to open and carry on correspondence or negotiations with foreign nations, in matters concerning the interests of the country or of its citizens."[9]

Justice Jackson also referred to the concept in an opinion written just four years before the *Steel Seizure Case.* In *C. & S. Air Lines* v. *Waterman Corp.,* a case involving a Civilian Aeronautics Board decision to deny an airline a license to serve foreign countries, Jackson said:

> Congress may of course delegate very large grants of its power over foreign commerce to the President. [Citation omitted.] The President also possesses *in his own right* certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs. For present purposes, the order draws vitality from either or both sources.[10]

Finally, to complete this brief history, the passage from *Curtiss-Wright* with the "sole organ" reference was quoted and reaffirmed in *Dame & Moore* v. *Regan* in 1981.

The "Sole Organ" and the Boland Amendments

What are the implications for the Iran-Contra investigation of characterizing the President as the "sole organ" of foreign policy? For one thing, it is beyond question that Congress did not have the constitutional power to prohibit the President from sharing information, asking other governments to contribute to the Nicaraguan resistance, or entering into secret negotiations with factions inside Iran. Such conversations are paradigms of what Chief Justice John Marshall said in *Marbury* v. *Madison:* "The President is invested [by the Constitution] with important political powers in the exercise of which he is to use his own discre-

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*The Supreme Court in an unrelated matter in 1812 had held that federal courts could no longer impose criminal penalties based simply on the common law. *U.S.* v. *Hudson & Goodwin* 11 U.S. (7 Cranch) 32 (1812). For contrast, see Chief Justice Jay's charge to the jury in *Henfield's Case,* in which Jay stated his reasons why the government could impose a common law criminal sanctions to support President Washington's Neutrality Proclamation. 11 Fed. Cas. 1099 (C.C.D.Pa., 1793) (No. 6,360).

tion."[11] In addition, as Marbury made clear, these powers do not stop with the President. To make them effective, the President may exercise his own discretion through agents of his own choice.

> To aid him in the performance of these duties, he is authorized to appoint certain officers who act by his authority and in conformity with his orders. In such cases, their acts are his acts; and *whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion.* . . .
>
> The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the president, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable.[12]

What follows from Chief Justice Marshall's opinion in *Marbury* is that if Congress cannot prevent the President from exercising discretion over a particular matter, neither may it prevent the President's personal staff on the National Security Council, the Departments of State and Defense, the Intelligence Community, or the President's *ad hoc* personal representatives, from performing the same tasks on the President's orders and in his own name.

Many, if not all, of the actions by representatives of the U.S. government that have been alleged to run counter to the Boland amendments were essentially forms of information sharing and diplomatic communication. To the extent that such activities by the NSC staff, CIA, State Department or Defense Department were covered by the amendments—and we shall argue that many were not—we believe the activities were constitutionally protected against limitation by Congress. The executive was not bound to follow an unconstitutional effort to limit the President's powers.

Protecting American Citizens Abroad

One inherent presidential power particularly relevant to the Iranian side of this investigation is the power to protect the lives and interests of American citizens abroad. Our earlier summary of presidential uses of force without prior congressional authorization showed the many occasions for which this was the justification. One example was left off the earlier list to be used here.

In July 1854, U.S. Navy Commander George S. Hollins demanded reparations from Nicaragua after a U.S. official was injured during a riot. When he failed to receive satisfaction, Hollins ordered his ships to bombard San Juan del Norte, otherwise known as Greytown. Calvin Durand then sued Hollins in the Circuit Court for the Southern District of New York for damages the bombardment had caused to his property. In its opinion denying Durand's claim, the court said:

> As the executive head of the nation, the president is made the only legitimate organ of the general government, to open and carry on correspondence or negotiations with foreign nations, in matters concerning the interest of the country or of its citizens. It is to him, also, the citizens abroad must look for protection of person and of property, and for the faithful execution of the laws existing and intended for their protection. For this purpose, the whole executive power of the country is placed in his hands, under the constitution, and the laws passed in pursuance thereof. . . .
>
> Now, as it respects the interposition of the executive abroad, for the protection of the lives or property of the citizen, the duty must, of necessity, rest in the discretion of the president. Acts of lawless violence, or of threatened violence to the citizen or his property, cannot be anticipated and provided for; and the protection, to be effectual or of any avail, may, not infrequently, require the most prompt and decided action. . . .
>
> The interposition of the president abroad, for the protection of the citizen, must necessarily rest in his discretion; and it is quite clear that, in all cases where a public act or order rests in executive discretion neither he nor his authorized agent is personally civilly responsible for the consequences.[13]

Several times during the public hearing of these Committees, Republican Members referred to the 1868 Hostage Act. This act, which says that a President should take all steps necessary to secure the release of Americans held illegally by a foreign power, is discussed later, in the section of our Iran chapter about the Americans held hostage in Lebanon. Interestingly, the *Durand* v. *Hollins* decision affirming the President's discretionary power came eight years before the Hostage Act changed a discretionary power into an obligation. Even without that act, the *Durand* case stands for the proposition that the President has the discretion to take whatever steps may be necessary, short of a full scale war, to protect American citizens. The Supreme Court reiterated this point in its analysis of the privileges and immunities of U.S. citizens in *The Slaughter-House Cases*:

> Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt.[14]

This privilege of citizenship was specifically endorsed again by the Supreme Court in the 1890 case of *In re Neagle.* Referring to the President's obligation to "take care that the laws be faithfully executed," the Court said:

> In the view we take of the Constitution of the United States, any obligation fairly and properly inferrible from that instrument, or any duty . . . to be derived from the general scope of his duties under the laws of the United States, is "a law" within the meaning of this phrase. . . .
>
> Is this duty limited to the enforcement of acts of Congress or of treaties of the United States according to their *express terms,* or does it include the rights, duties and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution?[15]

In answering its own question, the Court referred the 1853 Austrian seizure of Martin Koszta, a Hungarian native who had declared his intention to become a U.S. citizen. Captain Ingraham trained his ship's guns on an Austrian ship to gain Koszta's release to France during diplomatic negotiations. The action "met the approval of the country and of Congress, who voted a gold medal to Captain Ingraham for his conduct in the affair," the Court noted. "Upon what act of Congress then existing can any one lay his finger in support of the action of our government in this matter?"[16]

After reviewing these cases, Borchard's 1915 treatise on protecting citizens abroad concluded:

> Inasmuch as the Constitution vests in Congress the authority to 'declare war' and does not empower Congress to direct the President to perform his constitutional duties of protecting American citizens on foreign soil, it is believed that the Executive has unlimited authority to use the armed forces of the United States for the protective purposes abroad in any manner and on any occasion he considers expedient.[17]

Quincy Wright's classic 1922 treatise on the control of U.S. foreign relations quoted this passage from Borchard and endorsed it "with the sole qualification that 'the manner' may not amount to a making of war."[18] Underlying Borchard's, Wright's and the 19th century Supreme Court's interpretation of the President's discretionary power is the Hamiltonian notions in the *Pacificus* papers. We noted earlier that Hamilton had rested part of his argument on the difference in language between Article I and II. Article I gives Congress "all legislative powers herein granted," but Article II gave the President all of "the executive power" without qualification. What the 19th century decisions did, in pure Hamiltonian fashion, was to look at the inherent character of the executive power and then look to Article I only to see if there were explicit exceptions carved out for Congress. When no such exceptions were found, the Presidential actions were upheld.

The Constitutional Limits to Congressional Restrictions

All of these court decisions demonstrate that the President was meant to have a substantial degree of discretionary power to do many of the kinds of things President Reagan did in Iran and Central America. They do not suggest that a President can do anything he wants. Congress and President were given different resources and different modes of influencing the same policy arenas. Both President and Congress can sway the U.S. posture toward Nicaragua or Iran, for example, but each have their own characteristic tools to bring to bear on the subject. What the Constitutional separation of powers protects is not the President's or Congress's precise sway over particular events. That is for the individual occupants of each branch to earn. But the Constitution does prevent either branch from using its own powers, or modes of activity, to deprive the other branch of its central functions.

The Iranian arms sales, for example, involved sales of U.S. assets. As such, the sales were governed either by the Arms Export Control Act, or by the Economy Act and National Security Act. These laws clearly affect one method a President may wish to use to protect American lives abroad. Nevertheless, the constitutionality of the legislation seems assured both by Congress's power to regulate foreign commerce (Article I, Sec. 8) and, perhaps, by Congress's power to set rules for disposing of U.S. property.[19] More importantly, the legislation would withstand constitutional challenge because Congress acted to pursue an explicit grant of legislative power without undermining or negating the President's equally important inherent power to protect American lives and safety.

Similarly, we grant without argument that Congress may use its power over appropriations, and its power to set rules for statutorily created agencies, to place significant limits on the methods a President may use to pursue objectives the Constitution put squarely within the executive's discretionary power. For example—although we shall show later that the Boland amendments, as actually written, permitted the NSC staff to continue providing certain types of military and operational advice to the Nicaraguan Democratic Resistance—we have no doubt that Congress has the constitutional power to enact a statute that would cut off all military and financial aid to the Resistance, except those that fall under the constitutionally protected rubric of information-sharing and diplomatic communication.

The question thus is not whether Congress has any power overlapping the President's, but what boundaries the Constitution places on congressional attempts to limit the President. The most obvious limit is that just as Congress cannot tell the President to do something unconstitutional, neither can it impose an unconstitutional requirement as a condition for granting a privilege.[20] It therefore may not insist that the President forego some of his constitutionally protected power to get appropriations. The most recent major case on this point is the "legislative veto" decision of *INS* v. *Chadha,* in which the Supreme Court held that Congress cannot demand that the President give up his power to sign, or refuse to sign, legislative decisions—even if the President agreed to the original bill that set up the procedure to bypass the so-called "presentment" requirement.[21]

Power of the Purse

These basic rules apply to appropriations as much as to any other kinds of laws. As Louis Fisher wrote in a 1979 study for the Congressional Research Service, the Constitution "does not distinguish between appropriation and authorization."[22] One recent court case on this point involved an amendment on a Health, Education and Welfare (HEW) Department appropriation bill prohibiting the department from using any of its funds, including salaries, to impose mandatory school busing plans on local communities to promote racial desegregation. The U.S. Court of Appeals for the District of Columbia ruled in 1980 that in order to preserve the statute's constitutionality, it would be construed to prohibit HEW from cutting off federal funds to a school district that refused to implement a busing plan. The statute could not, however, constitutionally prohibit HEW from seeking other ways to promote desegregation. In addition, if HEW believed a particular school district needed busing to enforce the requirements of the Constitution, the law could not be read to prohibit HEW from recommending that the Justice Department bring a suit in the federal courts.[23]

In other words, Congress may not use its control over appropriations, including salaries, to prevent the executive or judiciary from fulfilling Constitutionally mandated obligations. The implication for the Boland amendments is obvious. If any part of the amendments would have used Congress's control over salaries to prevent executive actions that Congress may not prohibit directly, the amendments would be just as unconstitutional as if they had dealt with the subject directly.

There is one other important way the Constitution circumscribes legislative limitations on the executive. To explain the way it works, it is easiest to begin with a quotation from the 1893 case of Swaim v. U.S.:

> Congress may increase the Army, or reduce the Army, or abolish it altogether; but so long as we have a military force Congress cannot take away from the President the supreme command. . . . Congress can not in the disguise of 'rules for the government' of the Army impair the authority of the President as commander in chief.[24]

The same argument extends by analogy to all of the President's inherent powers under Article II. Congress does not have to create a State Department or an intelligence agency. Once such departments are created, however, the Congress may not prevent the President from using his executive branch employees from serving as the country's "eyes and ears" in foreign policy. Even if Congress refuses to fund such departments, it may not prevent the President from doing what he can without funds to act as the nation's "sole organ" in foreign affairs. Even the final report of the Church committee acknowledged this point.[25]

In the same vein, Congress does not have to appropriate any funds for covert operations. Or, it may decide to give funds only for specified operations one at a time. Since 1789, however, Congress has chosen to give the President a contingency reserve fund for secret agents and operations. The existence of such a fund is obviously crucial, because without it Congress would have to make individual appropriations for each action and thereby harm the country's ability to respond to breaking events during a fiscal year without compromising the secrecy of the operation. Nevertheless, even though a contingency fund is an essential tool for foreign policy, there is nothing in the Constitution requiring Congress to set one up. Once Congress makes the decision to establish such a fund, therefore, it may as a quid pro quo set rules for its use.

However, there are some limits to the rules Congress may thereby impose. For example, Congress may not insist, and has never insisted upon giving advance approval to covert operations because such a requirement would be the functional equivalent of a legislative veto. Similarly, Congress may not condition an authorization or appropriation upon any other procedural requirements that would negate powers granted to the President by the Constitution. What Congress grants by statute may be taken away by statute. But Congress may not ask the President to give up a power he gets from the Constitution, as opposed to one he gets from Congress, as a condition for getting something, whether money or some other good or power from Congress.

Notifying Congress

This observation bears directly on the legal requirements for notifying Congress. Before we explain how, another "implied powers" analogy is in order. In the 1821 case of *Anderson* v. *Dunn*, the Supreme Court upheld Congress's contempt power by finding that even though the power was not explicitly mentioned in the Constitution, it was clearly necessary to implement other powers that were.

> There is not in the whole of that admirable instrument, a grant of powers which does not draw after it others, not expressed, but vital to their exercise; not substantive and independent, indeed, but auxiliary and subordinate.
>
> The idea is utopian that government can exist without leaving the exercise of discretion somewhere. Public security against the abuse of such discretion must rest on responsibility, and stated appeals to public approbation. . . .
>
> If there is one maxim which necessarily rides over all others, it is, that the public functionaries must be left at liberty to exercise the powers which the people have entrusted to them. The interests and dignity of those who created them, require the exertion of the powers indispensable to the attainment of the ends of their creation. . . .[26]

Using this line of reasoning, the Court argued that even though courts were vested with the contempt power by statute, they would have been able to exercise that power without the aid of a statute. For the same reason, the court held, Congress must have inherent authority to exercise a similar power.[27] Later cases tried to circumscribe Congress's contempt power, but the power itself was always held to be a necessary adjunct to Congress's legislative functions and therefore to rest on an implied constitutional foundation.[28]

The argument that a power must be implied by the Constitution because it is essential to some other constitutional power, is what lay behind the claims of President Carter's and President Reagan's Justice Departments that Congress may not constitutionally require the President to give advance notification, or even notification to a limited number of members within 48 hours, of all covert operations. Some operations, by their very nature, may make notification within 48 hours impossible. The situations are rare, but they clearly exist.

According to Admiral Stansfield Turner, who was the Director of Central Intelligence at the time, there were three occasions, all involving Iran, in which the Carter Administration withheld notification during an ongoing operation. By contrast, the CIA's general counsel has told the House Intelligence Committee that the Iran arms sales were the only time President Reagan withheld notice during his two terms.[29] In the Carter examples, notification was withheld for about three months until six Americans could be smuggled out of the Canadian Embassy in Teheran. As Representative Norman Mineta pointed out in testimony following Turner's, the Canadian government made withholding notification a condition of their participation.[30] Notification was also withheld for about six months in two other Iranian operations during the hostage crisis. Said Turner: "I would have found it very difficult to look . . . a person in the eye and tell him or her that I was going to discuss this life threatening mission with even half a dozen people in the CIA who did not absolutely have to know".[31] In these situations, President Carter thought his constitutional obligation to protect American lives could not have been fulfilled if he had been required to notify Congress within 48 hours. As the Canadian example makes clear, the choice is sometimes put on us by people outside U.S. control between not notifying or not going ahead at all.

These examples show that the situations under which notification may have to be withheld depends not on how much time has elapsed, but on the character of the operation itself. In the very rare situation in which a President believes he must delay notification as a *necessary* adjunct to fulfilling his constitutional mandate that decision must *by its nature* rest with the President. As the Supreme Court has said: "In the performance of assigned constitutional duties, each branch of the government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others."[32] The President obviously cannot consult with Congress about whether to consult. Any other conclusion would be logically absurd.

In some respects, requiring notification within a specific time period might look like other Congressional report-and-wait requirements imposed on the executive branch that the Supreme Court has explicitly endorsed.[33] There is one important difference, however. The report and wait requirements the Court has upheld have all been in domestic policy matters over which the President has no inherent power to act without statutory authorization. In foreign relations, Congress can use statutes to deprive Presidents of the means necessary to conduct an effective policy, but it cannot use its control over the means to deprive the President of his underlying authority or its essential adjuncts.

Some people in Congress worry that the power to withhold notification may be abused, as we think it was in 1985–86 in the Iran arms sales. To avoid abuse, Representatives Stokes and Boland have introduced a bill that would require advance notification in most cases, and notification within 48 hours for *all* of the rest. We are convinced this approach would be unconstitutional. Equally importantly, we think it is not needed. The constitutional basis for withholding notification can only be invoked credibly, by its own terms, in very rare circumstances. A generalized fear that Congress might leak would not by itself suffice, because the same fear could be invoked equally for all covert actions and therefore would not be credible. The members who think they need new legislation underestimate the political leverage they now have to insure that a President will not abuse his inherent power. The oversight rules already in place assure that Congress eventually will find out about any operation. Once that happens, Congress's control over the purse, and its power to investigate, give it ample means to exact a severe political price on a President whom it feels has overstepped proper bounds. The Iran-Contra investigations have made this abundantly clear to President Reagan. We cannot believe any future President will miss the point.

Conclusion

The Constitution gives important foreign policy powers both to Congress and to the President. Neither can accomplish very much over the long term by trying to go it alone. The President cannot use the country's resources to carry out policy without congressional appropriations. At the same time, Congress can prohibit some actions, and it can influence others, but it cannot act by itself, and it is not institutionally designed to accept political responsibility for specific actions. Action or implementation is a peculiarly executive branch function.

The Constitution's requirement for cooperation does not negate the separation of powers. Neither branch can be permitted to usurp functions that belong to the other. As we have argued throughout, and as the Supreme Court reaffirmed in 1983, "the powers delegated to the three branches are functionally identifiable."[34] The executive branch's functions are the ones most closely related to the need for secrecy, efficiency, dispatch, and the acceptance by one person, the President, of political responsibility for the result. This basic framework must be preserved if the country is to have an effective foreign policy in the future.

Endnotes

1. Field v. Clark 143 U.S. 649,691 (1892).
2. Youngstown Sheet and Tube Co. v. Sawyer 343 U.S. 579, 635-38 (1952).
3. *Id.* at 645.
4. Dames & Moore v. Regan 453 U.S. 654, 661-62 (1981)
5. *Id.* at 661.
6. *Id.* at 661, citing U.S. v. Curtiss-Wright Export Corp. 299 U.S. 304 (1936).
7. Panama Refining Co. v. Ryan 293 U.S. 388 (1935); Schechter Poultry Corp. v. U.S. 2295 U.S. 495 (1935); Carter v. Carter Coal Co. 298 U.S. 238 (1936).
8. 293 U.S. at 422. Emphasis added.
9. Durand v. Hollins 8 Fed. Cas. 111, 112 (C.C.S.D.N.Y., 1860) (No.4,186).
10. C. & S. Air Lines v. Waterman Corp. 333 U.S. 103, 109-10 (1948), emphasis added
11. Marbury v. Madison, 11 Cranch 137, 165-66 (1803).
12. Id. at 166.
13. 8 Fed. Cas. at 112.
14. Slaughter-House Cases, 16 Wall. 36, 79 (1872).
15. In re Neagle 135 U.S. 1, 59, 64 (1890).
16. Id. at 64.
17. Borchard, The Diplomatic Protection of Citizens Abroad (1915) at 452.
18. Quincy Wright, The Control of American Foreign Relations (1922) at 307.
19. Article IV, Sec. 3. In this clause, the phrase "territory or other property" suggests an original meaning having more to do with land than money or other material assets, but subsequent cases have extended it to include mineral leases, U.S. v. Gratiot 39 U.S. (14 Pet.) 526 (1840), and electricity, Ashwander v. Tennessee Valley Authority 297 U.S. 288, 335-40 (1936).
20. Frost Trucking Co. v. Railroad Commission 271 U.S. 583, 598 (1925)
21. INS v. Chadha 462 U.S. 919 (1983).
22. Louis Fisher, "The Authorization-Appropriations Process: Formal Rules and Informal Practices," Congressional Research Service, Report No. 79-161 GOV, Aug. 1, 1979, p. 3.
23. Brown v. Califano 627 F. 2d 1221 (1980).
24. Swaim v. U.S. 28 Ct. Cl. 173, 221 (1893).
25. U.S. Senate, Select Committee To Study Governmental Operations, Final Report at 39.
26. Anderson v. Dunn 6 Wheat. 204, 225-26 (1821).
27. *Id.* at 628-29.
28. *Kilbourn* v. *Thompson* 103 U.S. 168 (1881) read the power narrowly, but *McGrain* v. *Dougherty* 273 U.S. 135 (1927) and *Sinclair* v. *U.S.* 279 U.S. 263 (1929) in turn read *Kilbourn* narrowly. Later cases have tended to involve conflicts between the contempt power and the First Amendment, *Watkins* v. *U.S.* 354 U.S. 178 (1957) and *Barenblatt* v. *U.S.* 360 U.S. 109 (1959).
29. U.S. House of Representatives, Permanent Select Committee on Intelligence, Subcommittee on Legislation, 100th Cong., 1st Sess., *Hearings on H.R. 1013, H.R. 1371, and Other Proposals Which Address the Issue of Affording Prior Notice of Covert Actions to the Congress,* April 1 and 8, June 10, 1987, p. 176.
30. *Id.* at 158.
31. *Ibid. at 45. See also 46, 49, 58, 61.*
32. *U.S.* v. *Nixon* 418 U.S. 683, 703 (1974).
33. See *Sibbach* v. *Wilson* 312 U.S. 1 (1941) and *INS* v. *Chadha* 462 U.S. at 935, n. 9.
34. *INS* v. *Chadha,* 462 U.S. at 951 (1983).

Part III

Nicaragua

Chapter 5

Nicaragua: The Context

It is impossible to understand the motivations for the Administration's actions without first understanding the strategic and political context within which it was operating. In describing these circumstances, it is necessary to begin with the fact that the Sandinista Government in Nicaragua is a Communist regime that openly espouses the expansionist, Leninist doctrine of "revolution without borders." Because of this, and because the Sandinistas have behaved in a manner consistent with the doctrine by supporting Communist insurgencies elsewhere in Central America, Nicaragua has become a direct threat to the stability of the governments of its neighbors and to U.S. security interests.

In 1979, in the belief that it was supporting a turn toward a more pluralistic, more democratic path in Nicaragua, the United States decided, with bipartisan support, to cut off all military aid to the corrupt predecessor dictatorship of Anastasio Somoza, supported its removal, and provided $118 million in economic aid to the new regime in its first 18 months. That bipartisan support included some of us who are among the more conservative Members of these Committees. Indeed, a clear majority in Congress accepted the Carter Administration's arguments that the Sandinista-led revolution should be judged by its actions. In short, the U.S. Government wanted to believe that the incoming revolutionary government would honor its mid-1979 pledge to the Organization of American States of implementing democratic reforms.

It was not too long, however, before it became apparent that once again the United States had been fooled by Marxists masquerading as democrats, much as the Sandinistas' mentor, Fidel Castro, had done 20 years before. By April of 1980, the Nicaraguan Council of State was packed with Sandinista adherents who were more attuned to policies of internal repression than to fulfilling the dashed promises that had led Social Democrats to join the revolutionary cause. That turn of events prompted the resignation of Alfonso Robelo and led him ultimately to join the leadership of the Nicaraguan resistance. Nevertheless, United States assistance continued.

But Sandinista repression goes beyond packing the key governmental forums. Consider these remarks by Resistance leader Adolfo Calero in our hearings:

> The Sandinistas are systematic breakers of human rights. There is no habeas corpus in Nicaragua. If people are not brought over to tribunals they are kept in jails at Sands, the secret jails. Their secret jails are spread throughout the country. There is torture going on. While I was living in Nicaragua I was personally told of experiences of one of my drivers, driver salesman of the Coca Cola. I remember he was put into a freezer and when he was about to die, and started to—I don't know what you call—the last reaction that people have when they are about to die—somebody heard him and took him out.[1]

What ultimately turned the course on aid to Nicaragua was not only the change in the Sandinista's behavior inside Nicaragua, however, but its growing importance in the global competition between the U.S. and the Soviet Union. The 1979 Foreign Assistance Act giving aid to the Sandinistas contained a provision, authored by Rep. C.W. "Bill" Young of Florida, that required the aid to be terminated if the President could not certify that Nicaragua was not exporting or supporting violence and terror in neighboring Central American nations. By September 1980, some Members of Congress began to question President Carter's certification on this point.

Representative Young, then a Member of the House Intelligence Committee, was disturbed by President Carter's certification of Sandinista compliance with democratic procedures and with its pledges to the OAS. As a Member of the intelligence panel, Young was privy to information that contradicted what the President was saying. On September 30, 1980, he decided to voice his concerns in public testimony before the House Foreign Affairs Committee's Subcommittee on Inter-American Affairs. Young had this to say about the main substantive point at issue:

> I am very concerned about the President making the certification that the government of Nicaragua is not involved in the exporting of terrorism or in supporting the overthrow of other duly constituted governments in Central America, since I have access to the intelligence information of the Central Intelligence and Defense Intelligence Agencies concerning this matter. While I

> cannot quote classified information in this open session, I can tell you that the intelligence reports confirm in overwhelming detail that the Sandinista clique that rules Nicaragua is engaged in the export of violence and terrorism.

Young's testimony did not stop at this point, however. It seems that the Democratic Administration was less than forthcoming about giving the legislative branch the information it needed to fulfill its policy responsibilities. Young said:

> I feel that you should also know about the difficulties that we have recently had in obtaining the classified information on this subject from the Executive Branch.
>
> As I previously noted, the staff of the Subcommittee on Evaluation has had an ongoing study of intelligence on Nicaragua which began in late 1978. As part of that responsibility the staff often makes visits to the CIA to talk with analysts and periodically requests studies produced by the CIA and other intelligence agencies in Washington, and in general has paid attention to what is going on.
>
> On 12 August of this year, the staff made a routine request to talk with an analyst at CIA's National Foreign Assessment Center about Nicaragua. The staff was told that they would not be able to talk with the analyst at CIA since there was "a Presidential Embargo" on talking about Nicaragua. I was unaware of this at the time since this took place during the recess, but the staff was quite concerned. The Chairman of the Committee, Mr. Boland, sent a letter to the Director of Central Intelligence on this matter, on August 22. To date the CIA has not responded to that letter.
>
> I would further note that the staff was notified via telephone on September 10 that the embargo had been lifted and that discussions could be held with CIA analysts. Two days later, the President made his certification that Nicaragua is not exporting terrorism and/or acting as a conduit for arms or sanctuary for revolutionaries in other Central American countries.
>
> It is very disturbing that the Central Intelligence Agency was directed to not provide an answer to the Chairman of the House Permanent Select Committee on Intelligence to the questions that he asked in his letter of August 22.

The conclusion Young drew from this was very serious. It mirrors one particular charge we have heard in the Iran-Contra hearings, but from a much firmer base.

> What we have is a case of the intelligence community being manipulated by the Executive Branch to protect a political sensitivity. What dismays me is the political misuse of the intelligence community, which rightfully has a reputation for objectivity. The intelligence community must be free of political bias so that our decision makers can use their reports to reach decisions based on the facts of the matter, and not on desired political outcomes.[2]

Following Young's testimony, the Carter Administration slowed down its aid to Nicaragua. It was not until January, however, in the final days of his Presidency, that President Carter decided to suspend aid.

The Reagan Administration quickly decided to conduct a careful review of available intelligence regarding Nicaraguan subversive, extraterritorial activities. In April 1981, the Administration determined that the Sandinistas were furnishing logistical and political assistance to the rebels in El Salvador. By November 1981, the Sandinista armed forces had grown from an armed force of only 5,000 2 years before, to about 40,000 troops supported by Soviet tanks, artillery, and armored personnel carriers.[3] Some 2 years later, the House Intelligence Committee, chaired by Representative Boland, corroborated this finding when it declared that:

> [T]his (Salvadoran) insurgency depends for its life-blood, arms, ammunition, financing, logistics and command-and-control facilities, upon outside assistance from Nicaragua and Cuba. This Nicaraguan-Cuban contribution to the Salvadoran insurgency is longstanding. It began shortly after the overthrow of Somoza in July, 1979. *It has provided, by land, sea and air, the great bulk of the military equipment and support received by the insurgents.*[4]

During the period between January 1982 and January 1985, while Congress was vacillating and pinching pennies, the Soviet Union and its allies provided about $500 million in military aid alone to Nicaragua. By early 1985, at the time of the cutoff of U.S. taxpayer military assistance to the Resistance, the Sandinista armed forces included 62,000 troops. Their arsenal also included nearly 150 tanks (of which more than 110 were T-55 Soviet battle tanks that were clearly superior to any other tank in the region), 200 other armored vehicles (mostly machine-gun-armed BTR-60 and BTR-152 personnel carriers that can carry an infantry squad), 300 missile launchers, 45 airplanes, and 20 helicopters, including the deadly Soviet MI-24 HIND-D "flying tanks" that General Singlaub described as "the most effective people killing machine[s] in the world."[5]

During 1985, the already high level of aid accelerated. According to publicly available material provided by the State Department, the Soviet Union, Cuba, and Eastern Bloc countries gave Nicaragua another $150 million in military aid in 1985. (In addition to the Soviet Union and Cuba, Nicaragua is receiving aid from Czechoslovakia, North Korea, Libya, and the Palestine Liberation Organization, among others.[6]) That figure for military aid jumped to $580 million for 1986 alone. Between December 1982 and October 1986, according to Defense Intelligence Agency estimates discussed in these Committees' public hearings, the same countries gave $1.34 *billion* in military aid and *another* $1.8 *billion* in economic aid to the Nicaraguan Government.[7] The net result is that Nicaragua has far and away the largest armed force in all of Central America, and that does not even take into account approximately 2,500 to 3,000 advisers from the Soviet Union, Cuba, and other Soviet bloc countries.[8] In contrast, all U.S. humanitarian and military aid to the Resistance during the entire 1980s amounted to approximately $200 million, $100 million of which came in the fiscal year from October 1, 1986 to September 30, 1987.

These numbers only begin to give a picture, however, of the reasons for viewing Nicaragua as a threat to the region. According to former National Security Advisor Robert C. McFarlane:

> The danger is not Nicaraguan soldiers taking on the United States, it is that country serving as a platform from which the Soviet Union or other surrogates like Cuba can subvert neighboring regimes and ultimately require the United States to defend itself against a Soviet threat, whether by spending more dollars on defense that we didn't need to, to worry about our southern border, whether we need to worry more about the Panama Canal now that Russians are here, whether we need to be concerned about the half of our oil imports that come from refineries in the Caribbean within MIG range of Nicaragua, and we have not had to think about these things for a long time.[9]

The danger, it should be obvious from what McFarlane said, is not simply that posed to other Central American countries by Nicaragua's own armed forces.

According to information presented during General Singlaub's testimony, the Nicaraguans are building a 10,000-foot-long airstrip at Punta Huete. As Representative Hyde observed, the runway is "capable of accommodating any Soviet aircraft in their inventory. That includes the Backfire bomber, the Bear-D reconnaissance aircraft, and it's strictly a military facility with antiaircraft guns deployed around the airfield." [10] Singlaub agreed, and said that what made the airfield significant was that it would accommodate intercontinental as well as short-range aircraft.

Nor is this all. The Soviet Union has an intelligence collection facility at Lourdes near Havana, Cuba, that is able to monitor maritime, military and space communications as well as telephone conversations in the Eastern portion of the United States. A similar base in Nicaragua would mean a similar capability for the Pacific and West Coast.[11] Finally, the Nicaraguans are building the Corinto port facility that is being made into a deep water port able to accommodate submarines.[12] The Soviet presence in Nicaragua, in other words, when combined with its presence in Cuba, could mean a Soviet base on both ends of the Caribbean as well as the only Soviet port in the Pacific outside the Soviet Union itself. The latter, Singlaub said, "would give them for the first time a base from which they could threaten the West Coast of the United States." [13]

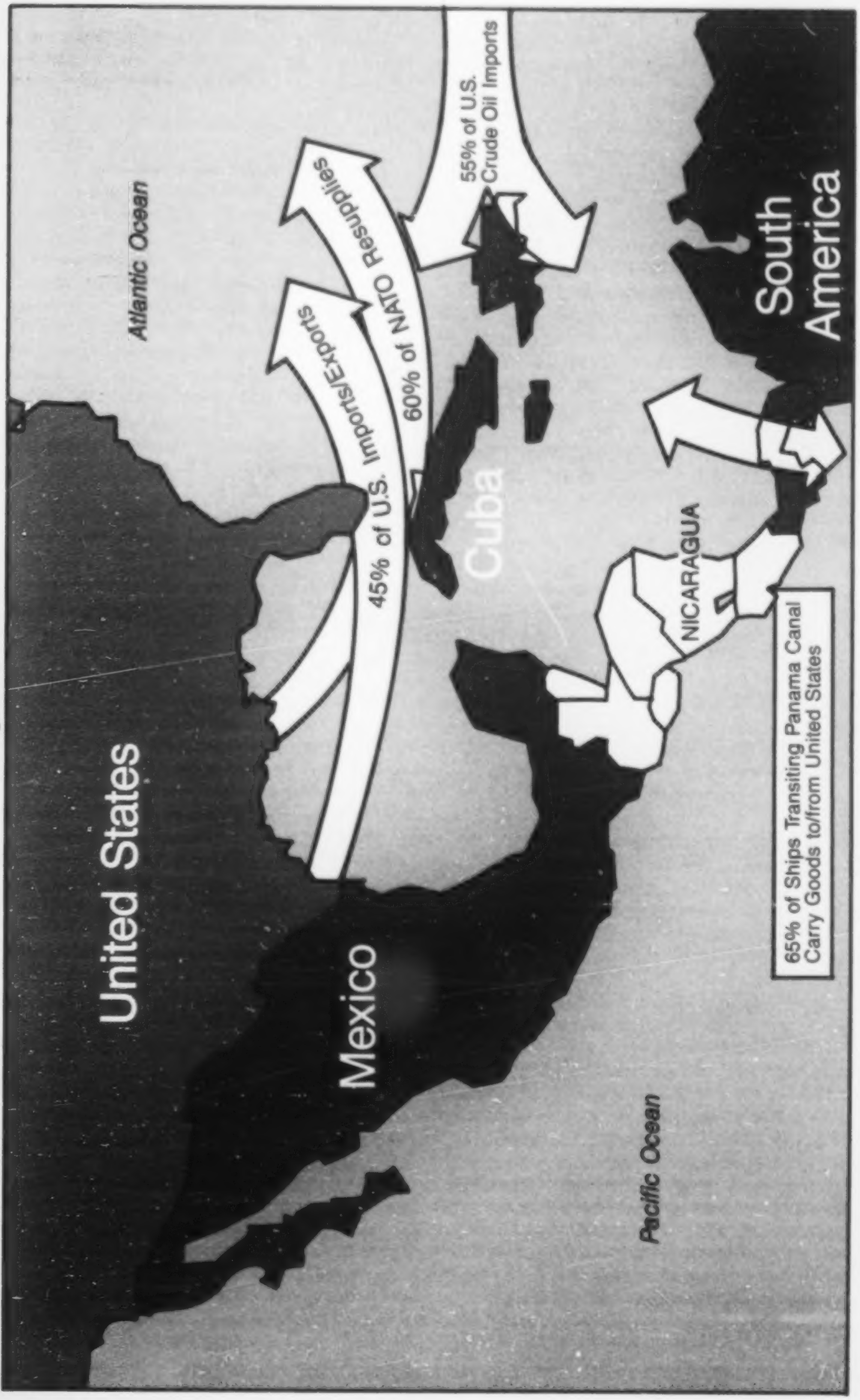
Atlantic Ocean
45% of U.S. Imports/Exports
60% of NATO Resupplies
55% of U.S. Crude Oil Imports
United States
Mexico
Cuba
NICARAGUA
South America
Pacific Ocean
65% of Ships Transiting Panama Canal Carry Goods to/from United States

Figure 5-1.

So there is plenty of reason for a President of the United States to think the Nicaraguan Government is not merely unfortunate for its own people, but a distinct threat to the security of the region and, ultimately, to the United States. This is no speculative threat. In 1983, the Congress found that:

> By providing military support (including arms, training, and logistical, command and control, and communications facilities) to groups seeking to overthrow the government of El Salvador and other Central American governments, the Government of National Reconstruction of Nicaragua has violated article 18 of the Charter of the Organization of American States which declares that no state has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state.[14]

This finding was not repealed by the Boland Amendment the following year. In fact, in the International Security and Development Cooperation Act of 1985, the Congress found that Nicaragua:

> Has committed and refuses to cease aggression in the form of armed subversion against its neighbors in violation of the Charter of the United Nations, the Charter of the Organization of American States, the Inter-American Treaty of Reciprocal Assistance, and the 1965 United Nations General Assembly Declaration on Intervention.[15]

The legal significance of these findings can be found in the charter of the Organization of American States. The specific clause of the treaty Congress charged Nicaragua with violating was the one that said: "No State or group of States has the right to intervene, directly or indirectly, in the internal affairs of any other State." [16] By defining Nicaragua's behavior as aggression, the Congress also, knowingly, was bringing another clause of the treaty into play:

> Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.[17]

Finally, by invoking these clauses, Congress also was involving a third that fundamentally distinguishes U.S. actions from Nicaragua's: "Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles as set forth in Articles 18 and 20." [18]

What all of this means is that when President Reagan sought to bring pressure on the Nicaraguan Government by aiding the Resistance, he was doing something more than merely furthering his own policy goals. According to the findings of the Congress of the United States and the terms of the OAS charter, the President was obliged to do what he could to act against Nicaragua's aggression against its neighbors. The finding would not have permitted the President to violate laws that explicitly prohibited the use of appropriated funds for a particular purpose. Beyond these explicit prohibitions, however, the President was not only permitted by his inherent foreign policy powers under the Constitution, but was positively obliged to do whatever he could, within the law, to respond to Nicaragua's behavior.

Because of this obligation, it is not proper to assert that the President should have gone out of his way to avoid any actions that some of the Boland Amendment's sponsors might arguably have wished to prohibit. Although no President is required to so interpret a law on any subject within his constitutional authority, such a response might have made sense as an act of prudence and comity *if* Congress had only passed a prohibition. The fact, however, is that Congress put two sets of obligations on the President, one mandating action and the other restricting it. Under the circumstances, the President had a duty to try to satisfy both of the mandates, to whatever extent he could possibly do so.

Endnotes

1. Calero Test., *Hearings*, 100-3, 5/20/87, at 51.

2. All of the above quotations from Representative Young are in U.S. House of Representatives, 96th Cong., 2d Sess., Committee on Foreign Affairs, Subcommittee on Inter-American Affairs, Hearing: "Review of the Presidential Certification of Nicaragua's Connection to Terrorism." Sept. 30, 1980; Prepared Statement of C.W. Bill Young, pp. 16-17.

3. U.S. Departments of State and Defense, *The Challenge to Democracy in Central America* (June 1986) at 20.

4. U.S. House of Representatives, 98th Cong., 1st Sess., Permanent Select Committee on Intelligence, H. Rept. 98-122, Part I, Amendment to the Intelligence Authorization Act for Fiscal Year 1983, p. 2, emphasis added.

5. The data are from Ex. OLN-212, *Hearings*, 100-7, Vol. II and from U.S. Departments of State and Defense, *The Sandinista Military Buildup, An Update* (Oct. 1987), at 5, 9. The quotation is from Singlaub Test., *Hearings*, 100-3, 5/21/87, at 178.

6. McFarlane Test., 5/13/87, *Hearings*, 100-1, at 79.

7. Calero Test., *Hearings*, 100-2, 5/20/87, at 111.

8. McFarlane Test., *Hearings*, 100-2, 5/13/87, at 76.

9. McFarlane Test., *Hearings*, 100-2, 5/14/87, at 64.

10. Singlaub Test., *Hearings*, 100-3, 5/21/87, at 217.

11. *Ibid.*, at 218.

12. *Ibid.*,

13. *Ibid.*, at 184.

14. Section 109 of the Intelligence Authorization Act for Fiscal Year 1984, Pub. L. No. 98-215, 97 Stat. 1475.

15. Section 722 (c)(2)(vi) of the International Security and Development Cooperation Act of 1985, Pub. L. No. 99-83, 99 Stat. 149.

16. Article 18 of the Organization of American States, as reprinted in the Congressional Record, June 7, 1985, p. S7744.

17. *Ibid.*, Article 27.

18. *Ibid.*, Article 22.

Chapter 6

The Boland Amendments

People listening to the public hearings on the Iran-Contra Affair heard many statements about the "spirit of the Boland Amendments." Everyone knows, the argument goes, that Congress wanted to cut off all U.S. aid to the Nicaraguan resistance. Congress did not anticipate that anyone on the National Security Council staff would support private and third-country fundraising or give advice to and help coordinate the private resupply effort. Col. North's activities were a clear attempt, the argument concludes, to circumvent the law.

There are three basic problems with this line of reasoning. First, as previously discussed, the Constitution does not permit Congress to prevent the President or his designated agents from communicating with the Nicaraguan resistance or from encouraging other countries and private citizens to support the resistance. Second, as Justice Frankfurter said in *Addison* v. *Holly Hill Co.*, "Congress expresses its meaning by words . . . . It is no warrant for extending a statute that experience may disclose that it should have been made more comprehensive."[1] One of the reasons there was so much discussion of the "spirit of the law" at the hearings is, as we shall show, that it is difficult to argue the letter of the law had been violated. Finally, even this last statement concedes too much. The fact is that Congress was not animated by a single "spirit" when it passed the Boland Amendments. It is necessary, therefore, to take account of the political history in the first part of this chapter as well as the statutory history in the rest.

The "Spirit" of October 1984

We have already noted that at the same time Congress was denying appropriations for the anti-Sandinista resistance, it was also declaring the Sandinista Government to be in violation of a provision of the OAS Charter that calls for a response by the President. In addition, Congress has changed its collective mind virtually every year over policy toward Nicaragua. The United States gave aid to the Sandinistas in fiscal 1980, took aid away from the Sandinistas at the end of 1980 for fiscal year 1981, and then gave covert support to the democratic resistance in 1981 for fiscal year 1982. For fiscal 1983, Congress denied aid "for the purpose of overthrowing the government," a restriction that was all but meaningless and therefore adopted by the House unanimously. For fiscal year 1984, Congress removed the language about purpose but limited the amount of assistance to a level that it knew would not last for the full year. Then, the strictest version of the Boland Amendment was adopted for fiscal 1985—partly, it is often said, because Congress was upset at allegedly not having been informed about the CIA's role in connection with the mining of Nicaraguan harbors.*

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*Much has been written about whether the late Director of Central Intelligence, William Casey, adequately informed the Senate Intelligence Committee about the mining of Nicaraguan harbors in 1984. A review of the record indicates that while Casey could have been more expansive, he did clearly tell the Committee on March 8, and again on March 13, that mines were being placed in the Nicaraguan harbors of Corinto and El Bluff, as well as at the oil terminal at Puerto Sandino. See Bob Woodward, Veil: The Secret Wars of the CIA 1981-1987 (1987), Chapter 16, 319-338; also McMahon Dep., 9/2/87, at 32-41.

On the House side, the Intelligence Committee, chaired then by Edward Boland, received a mining briefing on January 31, 1984, more than two months before these activities became a public controversy, and approximately three weeks after the first mines were deployed. The CIA had been discussing the possibility of mines being employed in Nicaragua with the House panel as far back as the summer of 1983.

In essence, what appears to have happened in the Senate is that following disclosures in the media in early April 1984 about these operations, a number of Senators feigned ignorance of these activities. In fact, they had known about them for some time. Senator Leahy was one who had known for some time and scolded his colleagues for their hypocrisy. Reportedly, some Senators who knew about the mining when they voted for additional assistance for the Contras turned around after the media disclosures and voted for a resolution condemning and prohibiting the mining. As Leahy put it, "There were Senators who voted one way the week before and a different way the following week who knew about the mining in both instances and I think were influenced by public opinion, and I think that's wrong and that is a lousy job of legislative action." (See Henry J. Hyde, *Can Congress Keep a Secret?*, National Review, Aug. 24, 1984, pp. 46-61; also, Bernard Gwertzman, *Moynihan to Quit Senate Post in Dispute on CIA*, New York Times, April 16, 1984; Joanne Omang & Charles Babcock, *Moynihan Resigns Intelligence Panel Post, Assails CIA*, Washington Post, April 16, 1984; *Sen. Moynihan's Point*, Washington Post, editorial, April 17, 1984; McFarlane Test., *Hearings*, 100-2, 5/13/87, at 230-32.)

During this period, Casey's deputy was John McMahon. His recollection of this matter is consistent with Leahy's. He indicates

The way the majority treats the mining incident is symptomatic of its entire pre-history of the Boland Amendment. The basic argument is that Congress had an open mind about Nicaraguan policy, but that the Administration offered shifting rationales for the policy, misled Congress as to its intentions and actions, and finally justified a cutoff of funds by failing to notify Congress adequately about the mining of the harbors in Nicaragua. This is, of course, a totally subjective, hence fundamentally misleading account of the political history, to the limited extent that the facts it cites are accurate. First, the majority thesis utterly ignores what the Soviets and Sandinistas were doing during the same period to escalate the conflict and consolidate the Marxist regime in Managua.* Second, it ignores the fact that many Members of Congress, almost all Democrats, opposed U.S. policy in Nicaragua almost from the beginning, and that most of the votes in both the House and the Senate during the relevant periods, including the votes on the various contested versions of the Boland Amendments, were almost completely straight party-line votes.

One key result of its remarkably distorted account is that the majority often confuses cause and effect. This is almost self-evident in its treatment of the mining of Nicaraguan harbors. In October 1983, Congress decided to limit funding for the Contras to $24 million for fiscal year 1984, an amount deliberately calculated to fall considerably short of the Contras' needs for that period. This was the handwriting on the wall, that the Contras might well be cut off completely if there was a slight change in the climate of opinion. The Contras knew it; the Sandinistas knew it; and the U.S. Government knew it. The mining was therefore an effort to bring the Sandinistas to the table before Congress cut off support. In short, it was an effect of the Congressional decision, not the cause of a later decision. But this reversal of cause and effect is typical of the majority's amateur psychohistory. Unfortunately for them, in many other parts of the world psychohistory is correctly not regarded as a useful tool in foreign relations.

The strictest of the Boland Amendments was in effect for only eight months when Congress decided to allow some humanitarian aid to the resistance. Then, a few months into the fiscal year, Congress also permitted communications assistance and advice. Finally, for fiscal 1987, Congress resumed full funding for the resistance at a level of $100 million. As McFarlane said to Representative Courter during testimony, "It is absolutely out of the question to have a coherent policy with that kind of a change in the legal framework." [2]

Congress's ambivalence expressed itself not only from year to year, but within years as well—including the year of the strictest Boland prohibition. If all we were talking about was a clear expression of Congressional intent in the form of a strict prohibition, that clear statement would have to govern for as long as it stayed in effect. The fact, however, is that Congress was of more than one mind—even within the statute that contained the strictest Boland prohibition.

The most stringent Boland Amendment was part of a continuing appropriations resolution that included 9 of the 13 appropriations bills needed to fund the Gov-

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that on the March 12, 13 Appropriations Committee Senators were briefed, and on the following day, "Casey was back to the Senate Intelligence Committee" to remind Members of what he had told them previously about the mining. After that session, McMahon recalls:

> [There was] still not a word. We then, on March 28, got a letter from Senator Pell in Foreign Relations saying, "Tell me about this mining." So we prepared a written response, sent it to Senator Pell through Barry Goldwater, who was then Chairman of the Senate Select Committee on Intelligence. Not much happened until the latter part of the first week, in April, when there was a great deal of furor in the press, which generated in Europe, about the mining of the harbors, was picked up by the Post and Times here and a lot of noise, and suddenly amnesia struck Capitol Hill, no one remembered hearing about the mining . . . Barry Goldwater sent a letter to Casey telling him he was "pissed." When I got this letter I went in to Casey and said, "What the hell is he talking about, where has he been for the last two months?" (See McMahon Dep. 9/2/87 at 35-37.)

Subsequently, according to McMahon, Casey confronted Goldwater regarding the mining notification. McMahon recalls:

> [Casey] showed him then the transcript from the hearings on the 8th and on the 13th of March, and Barry [Goldwater] said, "You know, I don't know, I just don't remember." And it's my understanding that Barry wanted to send a letter of apology to the agency but was urged not to do so—because the Senate apologizes to no one.

McMahon added that as far as he was concerned, "there was no intent by the agency to keep the mining of the harbors from the committees. We did everything we possibly could to tell them about it and tell them about it in a timely fashion." (McMahon Dep., 9/2/87 at 36-38.)

Interestingly, Senator Goldwater, who excoriated Casey for allegedly not properly informing the Senate Intelligence Committee on the mining, voted on April 10, 1984, against the resolution condemning the mining. (See Congressional Record, April 10, 1984, p. S4205.)

Ultimately, Casey felt the politically expedient thing to do was to "apologize" to the Senate Intelligence Committee and get this brouhaha behind him. When he finally did so, Senator Jake Garn reportedly became enraged because he believed there had been adequate notification. In his new book, Veil, Bob Woodward claims Garn underscored his fury by screaming:

> "You're all [expletive deleted]s—the whole Congress is full of [expletive deleted]s, all five hundred thirty-five Members are [expletive deleted]s" . . . . Members stood up, including Moynihan, who wanted to prevent a further confrontation. "Smile," Moynihan said, "when you call me an [expletive deleted]." Garn later wrote to Goldwater and apologized for disrupting the Committee. (See Woodward, Veil, at 33.)

Garn subsequently confirmed most of this story, saying only that the incident occurred after the committee meeting was over and that he did not apply the expletive to the full Senate. See *Around the Hill*, Roll Call, October 25, 1987, p. 13.

*It is one of the curious facts of the Majority Report that the first acknowledgement of the communist nature of the regime comes on page 11 of the Executive Summary while the first political description of the Sandinistas comes on page 3.

ernment for fiscal 1985.[3] The fiscal year started on October 1, 1984. President Reagan had already vetoed one continuing resolution because of its spending levels; Government workers even had to be furloughed at one point. By the time a reworked funding bill reached the floor on October 10 and 11, there was a great sense of *political* urgency. Election Day was only 3 weeks away, the resolution contained a large number of contentious water and public works projects important for individual districts, and members of the House and Senate were all eager to get home to campaign.

All year long, passage of the Intelligence Authorization and Department of Defense Appropriations Acts had been stalemated between the staunch opponents of aid for the resistance, who made up a majority in the House, and the equally staunch supporters of aid, who formed a majority in the Senate. In the compressed, highly politicized pre-election timetable of October, the two groups were willing to work out a compromise. The final defense appropriations bill included the famous Boland prohibition quoted below, together with a series of expedited procedures that would let Congress vote on a new, $14-million aid package for the Contras any time after February 28.

Some supporters of aid for the resistance, such as Senator John East of North Carolina, criticized the Senate Republican leadership for agreeing to the deal. "What I think we have done in this conference report is exchange the aid to the Contras and other important defense-related items . . . for water projects," East said.[4] Senator Ted Stevens, who was the Assistant Majority Leader and, as Chairman of the Appropriations Subcommittee on Defense, was the floor manager of this portion of the conference report, was the other main speaker on the Senate floor at the same time as East. Stevens said that:

> [East's position] is counterproductive to his point of view. There is money in this bill for assistance to the Contras. There is $14 million . . . . I can tell the Senator that it would take less than 31 days to pursue that subject under this report, in terms of fast-tracking both the House and Senate, a resolution to approve the President's certification.
>
> That money is in the bill and it can be used.
>
> The money that was provided the Contras ran out in August. The Contras are still supporting themselves with assistance they are getting from elsewhere in the world. Having that assistance out there to be made available on March 31 will encourage that assistance from other sources to the Contras during this period.[5]

Representative Boland's explanation of the conference agreement took note of the same compromise language, albeit in terms that emphasized the importance of the prohibition he had been so strongly supporting. Representative Boland did say:

> This prohibition applies to all funds available in fiscal year 1985 regardless of any accounting procedure at any agency.
>
> It clearly prohibits any expenditure, including those from accounts for salaries and all support costs.
>
> The prohibition is so strictly written that it also prohibits transfers of equipment acquired at no cost.[6]

In the same speech, however, Boland also said:

> The compromise which we have worked out on Nicaragua preserves the House position with one important proviso.
>
> No funds may be spent on the secret war in Nicaragua until February 28, 1985 . . . .
>
> Only if Congress affirmatively provides for a renewal of funding for the war could any funds be used for that purpose.[7]

Representative Boland, in other words, essentially was confirming Senator Stevens' interpretation of the compromise. The Senate supporters of Contra aid were willing to agree to the conference report, and the President was willing to sign the bill, only because there was a general understanding that a second vote would be forthcoming after the 1984 elections were out of the way. Clearly, that understanding would have made no sense unless the resistance continued to exist. Thus, President Reagan's instructions to his staff to do whatever they could within the law to keep the democratic resistance alive, and the actions he took that were consistent with Congress's findings about the OAS charter, all were entirely in keeping with the full spirit—the spirit expressed by all of the participating Members of Congress—of even the strictest Boland prohibition.

The Words of the Boland Amendment

The real legal issue turns, therefore, on the exact words of the Boland Amendment.* Before turning to

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*The majority criticizes the only contemporaneous executive branch legal opinion on the issue, from the President's Intelligence Oversight Board, which concluded that the NSC was not covered by the Boland Amendment. The majority asserts that the drafter was not given all the facts needed for his opinion, but ignores the fact that the drafter specifically testified at the hearings that having the additional facts then before the Committees would not have changed his key legal conclusions. (Sciaroni Test., *Hearings*, 100-5, 6/8/87, at 12.) The majority also criticizes the credentials of the those words, however, it is important to bear in mind that they were a rider, or a limitation amendment, to an appropriations bill. The Boland Amendment was not, for example, like the Hatch Act, which prohibits specific (political) activities by civil servants whether they are on the job or off.[8] Nor is it like the Neutrality Act, which also prohibits defined activities and makes them criminal.[9] An appropriations rider, even if it reaches salaries, is nothing more than a limitation on the way Federal funds may be used. It does not reach a person's whole life and does not make activities criminal.

What were the precise "funds available," to use Mr. Boland's words, whose use was prohibited? The relevant language read as follows:

> During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.[10]

The terms of this prohibition apply to funds made available to specific arms of the executive branch. The fiscal 1983 prohibition of aid "for the purpose of overthrowing the government" applied only to funds available to the Department of Defense and Central Intelligence Agency. The fiscal 1985 law broadens the prohibition to include "any other agency or entity of the United States involved in intelligence activities." The obvious question, given Col. North's activities in behalf of the democratic resistance, is whether the staff of the National Security Council (NSC) is an "agency or entity" covered by the act.

Comparing the Boland Language With Broader Prohibitions

The phrase "agency or entity involved in intelligence activities" is surely an odd one that needs explaining. Some Members of Congress may have thought they were enacting an absolute prohibition in 1984, and that feeling may help explain the vehemence of their reaction to what the NSC staff did. But if that is the result Congress wanted to achieve, it chose very bad language for doing so—language that, as we shall show soon, carried a legislative history that specifically excluded the NSC from its coverage.

If Congress had simply wanted to prohibit all U.S. activity that might help the resistance, there were plenty of easier ways available for it to have done so. All it needed to do was look at another very well known and similar law, the Clark Amendment, that cut off support to the resistance fighters in Angola in 1976. That language read as follows:

> *Notwithstanding any other provision of law, no assistance of any kind* may be provided for the purpose, or which would have the effect, of promoting or augmenting, directly or indirectly, the capacity of any nation, group, organization, movement or individual to conduct military or paramilitary operations in Angola.[11]

Congress obviously knows how to write an airtight prohibition when it wants to. As in this example, it does not write about agencies or entities, but simply bars "assistance of any kind" from any source.

Virtually every year, appropriations bills contain prohibitions worded more broadly than the Boland Amendment. The continuing resolution for 1986, for example, says that "none of the funds available *in this or any other Act* shall be made available for the proposed Woodward light rail line in the Detroit, Michigan area" unless certain conditions are met.[12] If this example seems too far-fetched, consider the Hughes-Ryan Amendment to the Foreign Assistance Act of 1981, an amendment that anyone responsible for the Boland Amendment would know in detail: "No funds appropriated *under the authority of this or any other Act* may be expended by or on behalf of the Central Intelligence Agency" for foreign operations unless the President finds the action to be important to the national security and reports a description of the operation to Congress in a timely fashion.[13]

The absence of the phrase "any other Act" from the Boland Amendment is important for considering whether the NSC was covered by that act. The fiscal 1985 continuing resolution containing the Boland Amendment stitched together nine appropriations bills and a comprehensive crime control bill. The major sections of the resolution followed the wording of the original appropriations bills by designating each of the original bills as a separate "act," each with its own preamble and title.[14] That each "act" within the continuing resolution was treated as a separate legal entity is shown by the fact that several of them contained prohibitions against using the money "in this act" for lobbying, but each of the lobbying provisions was worded differently, prohibiting different kinds of behavior for different departments.[15] The Boland Amendment was not contained in the same appropriations bill that provides funds for the NSC. The Department of Defense Appropriations, for example, includes traditional elements of the intelligence community. The National Security Council, in contrast, is and traditionally has been funded together with the rest of the White House in an entirely separate appropriations bill for Treasury, Postal Service, and General Government that is considered by a separate appro-

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drafter, but ignores the fact that Committee testimony proves the opinion was approved and issued after review by a Board which includes Charles Meyers, former Dean of the Stanford Law School, as one of its three members. (*Id.*)

priations subcommittee.[16] If Congress had intended to cover the funds made available to the NSC staff for salaries, in other words, it could easily have followed the broad language of the Clark Amendment, the Arms Export Control Act, or words often used to extend appropriation riders to funds made available in "any other act."

The Boland Amendment's Language in Other Intelligence Law

What accounts for the narrowness of the language of the Boland Amendments? The phrase "agency or entity involved in intelligence activities" did not originate with these particular prohibitions. The history of its use in intelligence legislation begins with the attempts during the late 1970s to pass a comprehensive charter for the intelligence community.

On February 8, 1980, the last version of the broad charter bill was introduced in the Senate. It contained the following definition:

> The terms "intelligence community" and "entity of the intelligence community" mean
>
> (A) the office of the Director of National Intelligence [the bill's successor to the Director of Central Intelligence];
>
> (B) the Central Intelligence Agency;
>
> (C) the Defense Intelligence Agency;
>
> (D) the National Security Agency;
>
> (E) the offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;
>
> (F) the intelligence components of the military services;
>
> (G) the intelligence components of the Federal Bureau of Investigation;
>
> (H) the Bureau of Intelligence and Research in the Department of State;
>
> (I) the foreign intelligence components of the Department of Treasury;
>
> (J) the foreign intelligence components of the Department of Energy;
>
> (K) the successor to any of the agencies, offices, components or bureaus named by the clauses (A) through (J); and
>
> (L) such other components of the departments and agencies, to the extent determined by the President, as may be engaged in intelligence activities.[17]

Later, the same bill said that "the entities of the intelligence community [defined above] are authorized to conduct intelligence activities, under the direction and review of the National Security Council, but only in accordance with the provisions of this Act."[18] The bill, in other words, clearly and intentionally did not treat the NSC as an "entity of the intelligence community."

At least one staff consultant to the Senate Select Committee on Intelligence was concerned that the bill would not require the NSC to report any covert operations it might undertake. William R. Harris was directly involved in the deliberations that led to the statutory language we have been analyzing. Because of his expertise on the subject, House Chairman Lee Hamilton and Ranking Minority Member Dick Cheney wrote a letter to the former Senate consultant asking him "for any observations or recollections that relate to the concept of an 'intelligence agency' or 'intelligence entity' as traditionally understood by Congress or the Chief Executive." Harris responded on September 25, 1987, with a 14-page statement that is reprinted as Appendix A to this Minority Report. In his position as consultant, Harris urged the Committee to write language that would include the NSC:

> It was my position that, unless the mandatory reporting duties included the NSC and its staff, there was a foreseeable risk of the NSC managing covert operations through the NSC itself, without a specific duty to report on such activities to the oversight committees of the Congress. The Charter and Guidelines Subcommittee staffers indicated that the President would not authorize this change in customary practice, precisely because, upon discovery, the Congress would enact legislation requiring mandatory reporting by the National Security Council or the President regarding its activities.
>
> At this point (on a day in February 1980 that I cannot ascertain from my records), I took the issue to the staff director of the Senate Select Committee, William G. Miller. Any change of the nature I was proposing would reopen constitutional issues of concern to the Attorney General and the Counsel to the President. Mr. Miller reminded me that both Vice President Mondale and David Aaron, the Deputy Special Assistant to the President for National Security Affairs, served with the committee. The President would not permit, I was advised, the conduct of covert operations by the NSC staff itself. I reminded the staff director that intelligence charters must be designed to function under changed and partly unforeseen circumstances, well beyond the service of officials who knew the precise reasons for legislative action.[19]

Harris' position was that if Congress wants to prohibit or require the President and the NSC to do something—as he thought it should—then Congress should say so clearly and not rely on the political sympathy of a current Vice-President and NSC staffer. We agree with this position wholeheartedly. As Justice Frankfurter said in the quotation we used at the beginning of this chapter, "Congress expresses its meaning by words."[20]

One month later, the Committee staff produced a draft that partly addressed Harris's concern, not by expanding the definition of the intelligence community, but by adding language that would have made it more difficult for the NSC and other parts of the Government to conduct covert operations.[21] The Congress did not enact this language, however, and decided to concentrate strictly on the subject of oversight.

The Intelligence Oversight Act of 1980 started out as one section of the charter bill. After some change, it was enacted as an amendment to the National Security Act of 1947. The shorter version omits the original bill's long definition of the intelligence community to require reports of intelligence activities to Congress from:

> The Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities.[22]

In this version, the language is almost identical to the jurisdictional language of the Boland Amendment. Given the statutory history, the phrase appears simply to be a shorthand substitute for items (C) through (L) on the long itemized list in the proposed charter.

The fact that the Oversight Act was an amendment to the National Security Act is instructive. The National Security Act created the National Security Council, which has only four statutory members: the President, Vice President, Secretary of State, and Secretary of Defense, with the President clearly put at the head. In order to believe that the phrase "agencies and other entities involved in intelligence activities" applied to the NSC, one would have to accept the entirely preposterous idea that the 1980 law contemplated the head of the NSC, that is, the President, personally reporting any "significant anticipated intelligence activity"—including any of a purely information-gathering character—to the Intelligence Committees. Even if Congress had wanted to engage in the constitutional confrontation such a reading would imply, it is difficult to imagine Congress specifically mentioning the Director of Intelligence in the Oversight Act, and then reaching the President by indirection without even bothering to say so.

The point that Congress did not intend to treat the President as the head of an "intelligence agency or entity" is strengthened when one realizes that the Oversight Act also amended a sentence that appears immediately after the one in the Hughes-Ryan Act, which does require Presidential Findings for covert CIA operations. There is no way the Members of Congress could have amended one sentence without considering its relation to the other. As the words of Hughes-Ryan make clear, when Congress wants to place a requirement on the President, it does so directly.

There is no way to avoid the conclusion that the text of Oversight Act imposes. Even though many people today seem to assume that this law imposes a reporting requirement directly on the President, the fact is that it does not. The Oversight Act's reporting requirements cover the Director of Central Intelligence and the heads of all other agencies or entities involved in intelligence activities. It deliberately did not cover the NSC or its head, the President. It knowingly exempted the NSC, even though the NSC staff had engaged in many activities during the 1970s that were well known to Congress and would have called for a required report under the 1980 act if the NSC had been covered. In fact, no one even hinted in 1980 that the NSC or its staff should be covered by the Oversight Act. It is fanciful to maintain that Congress intended to break almost 40 years of complete deference to the President's use of the NSC without provoking some extended discussion or controversy.[23]

Harris concludes that Congress adopted language in 1980 that deliberately stepped back from earlier proposals for Government-wide reporting requirements to narrower language that excluded the NSC. He wrote:

> In the period 1975-1978, Congressional investigations of intelligence activities encompassed entities of the entire federal government, and proposals for mandatory reporting to the Congress mirrored that broad jurisdictional concern.
>
> Commencing in 1978, the intelligence oversight committees adopted the procedure of enacting separate intelligence authorization acts for all entities of the "intelligence community" engaged in national intelligence or counterintelligence. Concurrently, from 1978 onwards, draft legislation proposing mandatory self-reporting by heads of intelligence departments, agencies, or entities encompassed expressly specified departments and agencies and other "entities" that performed classified missions within the "intelligence community." Proposals in 1980 to extend the scope of "entities" to include the National Security Council and its staff were *expressly* rejected in the course of streamlining what became the Intelligence Oversight Act of 1980.[24]

Once again, we agree completely with Harris' conclusions. His words, we should point out, gain credibility from the fact that he wanted the NSC to be covered, over the opposition of President Carter's White House. Nevertheless, we acknowledge that a statement from a former Senate staff aide has no compelling legal weight as legislative history. What gives the interpretation its real weight is that it is the only one that can make sense of the words Congress used in the various bills it considered and the final law it enacted.

After the Oversight Act

To complete this line of analysis, President Reagan issued Executive Order 12333 on December 4, 1981, defining the intelligence community essentially along the lines of the charter bill. This language was meant to be a definition of the phrase "agencies or entities involved in intelligence activities" that appeared in the Oversight Act. The principal NSC staff coordinator for the executive order was Kenneth DeGraffenreid, who had worked on the staff of the Senate Select Committee on Intelligence at the time the Oversight Act was enacted.[25] The relevant section read as follows:

> The *Intelligence Community* and *agencies within the Intelligence Community* refer to the following agencies or organizations:
>
> (1) The Central Intelligence Agency (CIA);
>
> (2) The National Security Agency (NSA);
>
> (3) The Defense Intelligence Agency (DIA);
>
> (4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
>
> (5) The Bureau of Intelligence and Research of the Department of State;
>
> (6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy, and;
>
> (7) the staff elements of the Department of Energy.

It is worth noting that missing from this enumeration is the charter bill's elastic provision, which could potentially expand the list.

It is also worth noting that the enumeration is followed in Intelligence Authorization Acts, including the specific one for fiscal 1985 that contained the same prohibitory Boland Amendment as the continuing resolution. The previous year, the House had adopted a version of the Boland Amendment that also would have reached "any other agency or entity of the United States involved in intelligence activities."[26] The Senate refused to agree and $24 million, or enough to fund the resistance for about half a year, was finally adopted as a compromise. During the House's consideration of the bill, however, Representative Boland offered the following description of what the Authorization Act covered:

> Mr. Chairman, H.R. 2968, the Intelligence Authorization Act for fiscal year 1984 authorizes funds for all the activities of the Central Intelligence Agency; the Defense Intelligence Agency; The National Security Agency; other intelligence components of the Department of Defense and the Departments of the Army, Navy and Air Force; the Bureau of Intelligence and Research at the Department of State; the Intelligence Divisions of the Federal Bureau of Investigation; intelligence elements of the Departments of Treasury and Energy, and of the Drug Enforcement Administration; and the intelligence community staff of the Director of Central Intelligence.
>
> Generally, these activities are divided into two categories. The first is intelligence activities—that is to say, national intelligence activities—which produce intelligence for important policy-makers of the Government—the President, the Cabinet, the National Security Council and the Joint Chiefs of Staff.[27]

Representative Boland, in other words, adopted the traditional distinction of the Oversight Act and Executive Order 12333 between the intelligence community, on the one hand, which produces intelligence, and the National Security Council, which is not an agency "involved in intelligence activities" but a consumer. He made it clear that the authorization bill did not apply to the NSC.

The authorization acts follow the jurisdiction, or power to legislate, that the rules of the House and Senate give to the Intelligence Committees. The White House and NSC staff authorizations clearly and exclusively fell within the jurisdictions of other committees at the time of the Boland Amendment, as they do now. The importance of this fundamental fact of legislative history may be lost unless one has a sense of the jealousy with which committees traditionally guard their own jurisdictions. If Congress had intended to cover staffs that fall within the jurisdictions of two committees, the procedure virtually always adopted would have been for the second committee to ask for, and get, a multiple referral of the bill. Committees normally insist on multiple referral even when they are in complete agreement with what a bill is trying to do, because they want to preserve their own jurisdictional claims for the future.

To summarize, the Oversight Act, the Executive Order, and the typical intelligence authorization act do not cover the President or the National Security Council.* To quote Harris again, this history "establishes a presumption that only 'intelligence community' entities are intended to be covered by other intelligence-related legislation utilizing the phrasing."Harris does acknowledge that "the presumption may be rebutted by evidence of actual legislative intent to the contrary" and says that he does not know the specific legislative history of the 1984 and subsequent Boland Amendments.[28] We have searched that history, however, and there is no evidence of an intention to change a well-known term of art that excluded the NSC into one that included it.**

The Spirit Redux

Some members of these Committees have tried to argue, without addressing the legislative history just presented, that the Boland Amendment should be read not to cover a specific list of agencies, but any agency or entity that might in the future become involved with intelligence activities. Any other reading, it is said, would render the law meaningless by letting the President get around its provisions by putting agents in any of the Government's departments outside the intelligence community, including the Department of Agriculture.[29]

We consider this argument to be completely mistaken. For one thing, as we have just demonstrated, the term "agency or entity involved in intelligence activities" was not made up by the Boland Amendment out of whole cloth. If the phrase is to have any meaning, it must be the same in the Boland Amendment and Oversight Act. But the argument that an interpretation of Boland which excludes the NSC would be a "slippery slope" is also wrong because the slope is not in fact slippery. Arguments about the NSC staff do not automatically apply to other departments and agencies. The NSC staff is the President's personal foreign policy staff; the Department of Agriculture is not. The NSC is therefore authorized to conduct, and historically has conducted, activities directly related to the President's Contra policy that others may not conduct without explicit statutory authority.

If the language of the Boland Amendment did not cover the NSC, can the Administration fairly be said to have evaded the law through Oliver North's actions to help the democratic resistance? On the most obvious level, no one is evading the law if he or she continues to do something the law permits, or fails to prohibit. But to leave the matter there makes it look as if the Administration was faced with a clear Congressional mandate. In fact, as we have shown, the mandate was two-sided.

Part of what Congress wanted in 1984 was to cut off U.S. financial aid to the Contras. That objective was fulfilled. During fiscal 1984, Congress appropriated $24 million to support the resistance, and permitted the full infrastructure of the CIA, Defense Department, and other intelligence agencies to back up the expenditure of the money. When the Boland Amendment went into effect, the CIA's financial and infrastructure support was eliminated. The entire National Security Council appropriation, for all salaries and all worldwide activities, was between $4 million and $5 million during the mid-1980s. The *most* the NSC staff could do would be to spend a part of a few people's salaries to encourage activities that did not spend U.S. funds. At its most ambitious, the NSC staff's activity would therefore represent a minuscule fraction of the U.S. Government's support for the resistance before the prohibition.

This judgment is strongly reinforced by the facts disclosed by the record of these Committees' public hearings. During the period of the Boland Amendment, a very small number of NSC staff officials had responsibilities that related to the resistance. These responsibilities included, among other things, maintaining political contact with the resistance, exchanging information with it, and providing it with guidance and political advice. No one—especially not anyone familiar with U.S. intelligence—would maintain that the Boland Amendment outlawed these activities. At the same time, the NSC staff engaged in more controversial activities, such as giving the resistance expert assistance on arms procurement, helping to coordinate the operational details of military resupply, and persuading other countries to give financial support to the resistance. If one tried to keep a diary of the NSC staff's time, however, it would quickly become clear that any expenditure of NSC staff salaries on activities that *might* have been outside the law *if* the NSC were covered, was clearly incidental to expenditures for activities that remained clearly legal during the time of the most stringent Boland Amendment.

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*A technical question exists about whether North was covered by the Boland Amendment as an individual because his salary apparently was paid from the Department of Defense appropriation. Because North's salary could just as easily have been paid or reimbursed from the NSC appropriation, and because the functions he performed on detail to the NSC were clearly NSC duties unrelated to his DOD assignment, our basic point is unaffected.

**We note that the Department of Justice has concluded that language in section 403(b)(1) of the Intelligence Authorization Act reaches the NSC because it covers "any agency or entity involved in intelligence or *intelligence-related* activities." See U.S. Department of Justice, Memorandum for the Attorney General, "Legal Authority for Recent Covert Arms Transactions to Iran," December 17, 1986, p. 5, n. 10.

Given the history we have discussed, the accuracy of the Justice Department's conclusion is clearly open to question. Even assuming its correctness, *arguendo*. Attorney General Meese made the point in his testimony that the underlined phrase does not appear in the Boland Amendment and therefore makes this phrase broader than the one in that amendment. Therefore, Meese said, this language is clearly distinguishable from the definitional language of the Boland Amendment, which appears in a separate section of the same bill. See Meese Test., *Hearings*, 100-9, 7/29/87, at 421-22.

There were no other significant expenditures of appropriated funds to support the resistance during the period of the Boland Amendment—no " diverted" tanks or planes, for example. In short, the appropriations limitation purposes of the Boland Amendment in fact were met. Even though the NSC staff did support the resistance in the ways just described, the level of U.S. support dropped to just a trickle of personal advice. In addition, we must reiterate that Congress' full intention involved more than just the limitation provision. Congress assumed there would be a future vote on the resistance, and that the resistance would continue to exist as a viable force until that vote with funds from private and non-U.S. sources. Satisfying Congress's full intention, therefore, would almost seem to require some form of NSC staff involvement.

Oliver North and John Poindexter testified that they attempted to comply with the law.[30] We have seen that the NSC was not covered by the law's language. But even if the NSC had been covered, virtually all, if not all, of North's and Poindexter's activities in behalf of the democratic resistance would still have been lawful. This point can be best understood by looking at the different interpretations placed on the law from the beginning, and at the changes Congress began making to the Boland prohibitions within months of its adoption.

Sharing Information and Intelligence Under the Boland Amendment

A review of the legislative history of the Boland Amendment and related subsequent amendments makes clear that it was lawful for Col. North and others to provide intelligence to the resistance leadership. The legislative history also makes clear that it is reasonable to view the Boland Amendment as allowing the type of information transfer, advice, and coordination that Col. North and others provided to the Contra resupply effort.

On December 19, 1984, Director of Central Intelligence William J. Casey wrote to Representative Boland, Chairman of the House Permanent Select Committee on Intelligence, to describe some activities the CIA considered to be consistent with the prohibition bearing the Chairman's name. Casey's letter did not discuss normal information and intelligence-sharing because, as a still classified exhibit to Col. North's testimony makes clear,[31] Members of Congress already knew about, and approved, such communication between the resistance and CIA. Rather, Casey's letter was about providing specific, detailed intelligence that might be useful operationally. Casey wrote:

> We are contemplating providing defensive intelligence to the FDN . . . . This intelligence would be furnished exclusively for the purpose of precluding hostile actions against the FDN. We would ensure that the information provided does not contain the specific details requisite for the planning/launching of offensive operations.
>
> We are fully aware of the current restrictions pertaining to Agency support for insurgent forces. It is our belief, however, that provision of this information is consistent with our long-established practice of providing intelligence as appropriate to prevent loss of life.[32]

On January 14, 1985, Casey's letter was answered by Boland and Representative Lee Hamilton, who was soon to succeed Boland as chairman. According to their response:

> The thrust of the public debate [over the Boland Amendment] . . . was clearly directed at the complete severance of all intelligence community connections with the Contras and the end of all support for anti-Sandinista military activity. Therefore, your stated intention to provide "defensive intelligence" to the FDN is troubling . . . .
>
> It is our opinion that, at a minimum, section 8066 prohibits the provision of intelligence information to the FDN on any systematic or continuing basis, particularly if such information will enable a FDN force to avoid tactical contact with the enemy and thus be in a better position to continue military operations of its own.
>
> On the other hand, the unplanned for, isolated provision of incidentally acquired information to a person threatened by imminent assassination would seem reasonable.
>
> In any event, on the basis of the imprecise information given to us, we are unable to approve or disapprove any contemplated CIA activity. Some examples of intelligence you would provide to the FDN could, in our view, violate the law, yet not every example seemed illegal . . . .
>
> If your decision is to proceed, we ask that you provide the Committee with the guidelines under which your General Counsel will approve or disapprove the furnishing of intelligence to the FDN.[33]

In the first of the sentences quoted above, Hamilton and Boland clearly went beyond both the letter and spirit of the Boland Amendment by suggesting that its purpose was to eliminate "all intelligence community connections with the Contras." Those connections were continuing throughout the period with the

Chairmen's full knowledge and acquiescence, as we indicated above. However, there remained a valid dispute over exactly how detailed such intelligence sharing could be. Hamilton and Boland took the view that tactical information of a militarily useful sort was prohibited, even if it were for defensive purposes.

Two months later, the CIA responded to the Chairmen's request to provide Congress with detailed guidelines. On March 18, 1985, Casey wrote to Hamilton and to Senator David Durenberger, Chairman of the Senate Select Committee on Intelligence:

> This is in response to questions raised by the Committee regarding the Agency's plans to provide certain defensive intelligence to opposition groups in Nicaragua . . . . We do not intend to provide intelligence on any systematic or continuing basis. Our goal is humanitarian in nature and any intelligence we would pass would be strictly limited, on a case-by-case basis, to information which in general affects the lives of U.S. persons or third country noncombatants or which suggests that a holocaust-type situation involving substantial loss of life may occur.[34]

Casey thus indulged Hamilton and Boland temporarily on the specific issue, but presented the CIA's guidelines as the Agency's statement about what *it* would do, without conceding the House Chairmen's interpretation of what the law required. Until the CIA was able to get the law clarified, it behaved in a manner consistent with its own guidelines, which were drafted, as shown below, to be stricter than the law itself.

Five months later, on August 8, 1985, Congress resolved the interpretation dispute in the CIA's favor. In the Supplemental Appropriations Act for fiscal 1985, Congress said:

> Nothing in this Act, section 8066(a) of the Department of Defense Appropriations Act, 1985 (as contained in section 101 of Public Law 98-473), or section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) shall be construed to prohibit the United States from exchanging information with the Nicaraguan democratic resistance.[35]

Congress did not say it was creating new authority. The phrase, "nothing in this act . . . shall be construed to prohibit," is the kind of language Congress uses when it is indicating its interpretation of what a past law has always meant. The report of the House conferees made this abundantly clear:

> The conference committee discussed, and the Intelligence Committees have clarified, that *none* of the prohibitions on the provision of military or paramilitary assistance to the democratic resistance prohibits the sharing of intelligence information with the democratic resistance.[36]

This point was made again in December 1985, when Congress again addressed the subject of intelligence sharing. In the Intelligence Authorization and Department of Defense Authorization Acts of 1986,[37] Congress permitted the intelligence community to provide communications equipment and related training, and to exchange information with *and provide advice* to the democratic resistance. The conference report explained the provision this way:

> The conferees note that *under current law* and the restriction contained in Section 105 of this Conference Report, the intelligence agencies may provide advice, including intelligence and counterintelligence information, to the Nicaraguan democratic resistance. Section 105 does not permit intelligence agencies to engage in activities, including training other than the communications training pursuant to Section 105, that amount to participation in the planning or execution of military or paramilitary operations in Nicaragua by the Nicaraguan democratic resistance, or to participation in logistics activities integral to such operations.[38]

As with the August statute, the statutory history contains a clear reference to words that interpret what the law has been and not just what it will be. It is clear, therefore, that the law allowed Col. North and others to pass intelligence of military value to the resistance.

Advice for and Coordination of the Resupply Operation

The language and legislative history of the Boland Amendment, as modified by the "communications" and "advice" provisions, also make clear that Col. North and other U.S. Government officials could legally provide general advice, coordination, and information with respect to the Contra resupply operation that began in late 1985.

The Boland Amendment provides that:

> No funds . . . may be obligated or expended for the purpose or which would have the effect of *supporting,* directly or indirectly, *military or paramilitary operations* in Nicaragua. [Emphasis added.]

This language does not prohibit all support, but only support of a specific kind. The question that always arose, however, was what kind of support would constitute indirect support of a military operation inside Nicaragua? After the "communications" and "advice" provisions were enacted in 1985, the Chairmen of the House and Senate Intelligence Committees disagreed about their meaning—particularly as they might apply to a resupply operation, as opposed to specific military or paramilitary operations in Nicaragua.

Rep. Hamilton, in a December 4, 1985, letter, took the position that the law prohibited advice about "logistical operations upon which military or paramilitary operations depend." [39] Senator Durenberger, in a letter dated the next day, however, said that he believed the law meant to allow just such advice. Faced with these conflicting interpretations, the CIA, after a careful analysis of the legislative history, chose to accept the position that most clearly represented a harmonization of the points of difference between the two Chambers:

> The legislative history, therefore, seems to draw distinctions between, on the one hand, participation, planning, and providing advice (which would not be permitted in support of paramilitary operations) and, on the other hand, information sharing, including advice on the delivery of supplies . . . . There is no clear indication that Congress intended to prohibit the CIA from giving advice on supply operations, and some indication that it did intend to distinguish between mere information-sharing and actual participation in such operations. Furthermore, there would appear to be a valid distinction between permissible, general military resupply operations and operations in the context of specific military operations, which were not authorized . . . .
>
> Merely passing intelligence on Sandinista gun or radar placements, weather conditions, flight vectors, and other information to assist in the delivery of supplies for general maintenance of the forces in the field would not seem to be prohibited, both because this would not constitute "participation," and because this would not be "integral" to a "paramilitary operation" as contemplated by Congress." [40]

We agree with the legal conclusions reached in this memorandum. Based on these conclusions, we would argue that virtually all, if not all, of Col. North's activities in support of the democratic resistance would have been legal even if the Boland Amendment had applied to the NSC. By extension, we believe that virtually all, if not all, of the activities of employees of other executive branch agencies and entities that were covered were also legal. The worst that can be said of all of these people is that they adopted one side of a reasonable dispute over interpretation. In that dispute, the opinions of the Senate are every bit as much of a valid indicator of Congress's intention as the House's. There is no way, therefore, that behavior undertaken in reliance on the Senate's legislative record can fairly be interpreted as an intentional flouting of the law.

Endnotes

1. *Addison* v. *Holly Hill Co.* 322 U.S. 607, 617 (1944).
2. McFarlane Test., *Hearings*, 100-2, 5/13/87, at 187.
3. Pub. L. No. 98-473; 98 Stat. 1837.
4. Congressional Record, Oct. 11, 1987, p. S14206.
5. *Id.* at S14205.
6. *Id.* at H12206.
7. *Id.*
8. 5 U.S.C. 7324(a)(2).
9. 18 U.S.C. 960.
10. Pub. L. No. 98–473; 98 Stat. 1837, 1937 (Oct. 12, 1984), Continuing Resolution, Department of Defense Appropriations Act, Sec. 8066 (a).
11. 22 U.S.C. 2293, emphasis added.
12. Pub. L. No. 99-190, 99 Stat. 1287.
13. 22 U.S.C. 2422.
14. See, for example, P.L. 98-473, 98 Stat. 1877, 1885, 1905, 1923.
15. For example, compare Pub. L. No. 98-473, 98 Stat. 1923 with 1937-38.
16. See Pub. L. No. 98-441, 98 Stat. 1699 (Oct. 3, 1984).
17. 96th Congress, 2d Sess., S.2284, Sec. 103 (12).
18. *Id.*, Sec. 111 (a).
19. William R. Harris, "Reporting Obligations and Funding Restrictions Affecting Intelligence Departments, Agencies, and Entities of the United States," Prepared Statement in reply to a request of the U.S. House Select Committee to Investigate Covert Arms Transactions with Iran," Sept. 25, 1987, p. 7. Full statement reprinted as Appendix A to the Minority Report.
20. *Addison* v. *Holly Hill Co.* 322 U.S. at 617.
21. Harris, "Reporting Requirements," prepared statement at 8.
22. 50 U.S.C. 403.
23. See *TVA* v. *Hill*, 98 S. Ct. 2279, 2300 (1978).
24. Harris, "Reporting Obligations," prepared statement at 14, emphasis added.
25. *Id.*, p. 11.
26. Congressional Record, Oct. 20, 1983, p. H8413.
27. *Id.*, p. H8389.
28. Harris, "Reporting Obligations," prepared statement at 11-12.
29. See Senators Inouye and Mitchell, Meese Test. Hearings, 7/29/87, at 428-29.
30. This point was corroborated by Generals Secord and Singlaub. See Secord Test., Hearings, 100-1, 5/21, at 197; Singlaub Test., Hearings, 100-3, 5/21/87 at 197.
31. OLN-91.
32. North testimony, Exhibit OLN-333A.
33. *Id.*
34. *Id.*
35. Pub. L. No. 99-88, Sec. 102 (b).
36. U.S. House of Representatives, 99th Cong., 1st Sess., H.Conf. Rept. 99-237, International Security and Development Cooperation Act of 1985, p. 144, emphasis added. The provision first appeared in the ISDCA, but the conferees agreed to drop the provision because the same language was to appear in the supplemental appropriations act. Nevertheless, this interpretation is the one that was offered to the House by the committee of jurisdiction that had originated the language. The interpretation was not contradicted in other reports or on the House or Senate floor.
37. Pub. L. No. 99-169; Pub. L. No. 99-190.
38. U.S. House of Representatives, 99th Cong. 1st Sess., H. Rept. 99–373, Conference Report to Accompany H.R. 2419, p. 16, emphasis added.
39. As quoted in March 2, 1987, memorandum from CIA Associate General Counsel W. George Jameson to the General Counsel, p. 6; Ex. TC-13, *Hearings*, 100-4.
40. *Id.* at 5, 7.

Chapter 7

Who Did What To Help The Democratic Resistance?

The public hearings of these Committees presented a confusing picture of U.S. assistance to the Nicaraguan democratic Resistance during the period of the Boland Amendments. The overall impression the Committees' majority tried to create was that the government was engaged in a massive effort to subvert the law. A careful review shows, however, that this simply was not the case. The NSC staff's activities fell into two basic categories. Some were the kinds of diplomatic communication and information sharing that Congress may not constitutionally prohibit, even if Congress had intended the Boland Amendment to apply to the NSC. Others, with the possible exception of the diversion, were in accordance with the law, as we have analyzed it in the preceding section.

Given the nature of the strategic threat in Central America, we also believe President Reagan had more than a legal right to pursue this course of assistance to the Contras. We believe he was correct to have done so. The mixed signals Congress was giving indicates that many members agreed. Our *only* regret is that the Administration was not open enough with Congress about what it was doing.

We have no intention here of trying to present all of the evidence the Committees received about what each person did. If we did, our dissent would have to be as long as the Committees' narrative. Frankly, we believe the mind-numbing detail in that narrative obscures as much as it reveals, leaving readers with some fundamentally mistaken impressions. In the following few pages, therefore, we will limit our comments to a broad factual overview to indicate why we reach the conclusions we do.

The President

President Reagan gave his subordinates strong, clear and consistent guidance about the basic thrust of the policies he wanted them to pursue toward Nicaragua. There is some question and dispute about *precisely* the level at which he chose to follow the operational details. There is no doubt, however, about the overall management strategy he followed. The President set the U.S. policy toward Nicaragua, with few if any ambiguities, and then left subordinates more or less free to implement it.

The first crucial step was the President's decision to back a December 1981 Central Intelligence Agency (CIA) proposal for covert action. Within a year, the policy was covert in name only and Congress began passing the first of the Boland Amendments. Nevertheless, when the Kissinger Commission recommended a more overt policy of support for the Resistance in 1984, former National Security Adviser Robert C. McFarlane testified that the recommendation was ignored by the President and by Congress.[1]

The Administration was aware as early as mid-1984 that Congress would probably cut off funds to the Resistance; the mining incident served as either a reason or as a convenient pretext for the cutoff, depending upon one's point of view. The President instructed the NSC staff, according to both McFarlane and Col. North, as early as the spring of 1984 to keep the "body and soul" of the Resistance together until Congress could be persuaded to resume support for them.[2] North testified that he understood this to mean specifically, among other things, that he was to keep the Contras together in the field as a fighting force.[3] Although McFarlane appears to have interpreted the President's desires somewhat more narrowly, McFarlane said that the President repeatedly made his general desire to support the Resistance known both privately and publicly.[4]

McFarlane and his successor, Admiral John Poindexter, both portrayed the President as having been generally aware that the Resistance was receiving funds from third countries and from private parties, but not of the details of Contra expenditures.[5] There is no evidence that the President authorized or directed McFarlane or the NSC staff to contact third countries in 1984 or 1985 to raise funds for the Resistance. There also is no evidence that the President personally solicited such funds from foreign heads of state, and the President has denied having done so.[6] However, it is clear that the President knew such funds had been given to the Resistance during 1984-85,[7] and that he did not tell the NSC staff not to encourage such foreign political or financial support. In addition, Poindexter said the President considered contributions from third countries to be entirely acceptable and thought they should be encouraged.[8] But whatever the President's precise knowledge or direction of the NSC staff's role in encouraging contributions, *we are firmly convinced that the Constitution protects such diplomacy by the President or by any of his designated agents—whether on the NSC staff, State Department or anywhere else.*

The President also knew that some private U.S. citizens were giving money to help the democratic Resistance—another activity that was perfectly legal.[9] In 1986, after Congress specifically stated that third country solicitations by the State Department were not precluded, the President did authorize such a solicitation in a National Security Planning Group meeting. That decision that eventually led Secretary of State George Shultz and Assistant Secretary Elliott Abrams to solicit the Government of Brunei.

The President's exact knowledge of other aspects of the NSC staff's support for the Resistance is less clear. The President knew North was the main staff officer acting as liaison to the Resistance. The President was briefed by Poindexter about the construction of an emergency air field in a neighboring country that was to be used for the private Southern Front resupply operation,[10] and, according to McFarlane, he personally intervened with the head of state of a Central American country to obtain release of an arms shipment for the Resistance that had been seized immediately after a vote in Congress to reject an effort to resume Contra funding.[11] On most other aspects of the resupply operation and North's military advice to the Resistance, the President seems not to have been informed of what McFarlane and Poindexter considered to be "details," many of which McFarlane denied knowing himself. Again, whatever the President's precise level of information, it is clear that matters about the President's knowledge of which these Committees can be sure—including the ones just cited—*all fall within the sphere of constitutionally protected diplomatic communication or the equally protected speech and encouragement of legal activity by U.S. citizens.*

The Vice President

There is *no* evidence that Vice President George Bush knew about either the Contra resupply effort or the diversion of funds to the democratic Resistance. The Vice President's staff does acknowledge having learned about General Secord's resupply operation from Felix Rodriguez in August 1986. The staff members informed the relevant agencies, but said they did not think the issue warranted informing Bush at the time. The testimony all says the subject was not discussed with the Vice President. Two April scheduling memoranda did use the word "resupply" in connection with one Rodriguez visit to the Vice President's office, but there is no reason to infer from a single phrase that the Vice President's staff had full knowledge of a subject the NSC staff was deliberately keeping from them.

Felix Rodriguez

The one point of connection between the Vice President, his staff, and the resupply effort, was Felix Rodriguez (also known as Max Gomez) a retired CIA officer and personal friend of Donald P. Gregg, the Vice President's Assistant for National Security Affairs. Rodriguez was a significant figure in North's resupply operation as the facilitator/coordinator of private benefactor flights. He had three short personal meetings with the Vice President during this time period. According to his testimony, all three related to his counter-insurgency efforts in Central America.[12]

The second of these meetings took place on May 1, 1986, some eight months after Rodriguez began working with North on the resupply effort and a few months after that effort became active.[*] According to his testimony, Rodriguez was fed up with the operation and was planning to quit.[13] Neither Watson nor Gregg had been told about his role at this time, Rodriguez said.[14] He had purposely kept that information from all others at North's request,[15] and asserted that he did not intend to inform the Vice President or his staff about the effort on May 1.[16] Nevertheless, a scheduling proposal dated April 6, and a very short April 30 briefing memorandum, described the purpose of the meeting as being, in part, to provide a briefing about "resupply of the Contras."[17] It is not clear how this language got into these documents.* Whatever the explanation, the people present at the meeting—former Senator Nicholas Brady, Gregg, Colonel Samuel J. Watson III (Gregg's deputy), and Rodriguez—all said they were certain resupply never was discussed with the Vice President,[18] and the Committees have no reason to doubt these statements. Neither do the Committees have any reason to suspect that Watson or Gregg knew about North's involvement at this time.

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[*] The majority in Chapter 3 claims that North employed the assistance of other U.S. officials in order to obtain approval from a Central American country to serve as the host for the resupply operation air base. Thereafter, it strongly suggests that Col. James Steele and Donald Gregg, the Vice President's National Security Adviser, were those other officials and that very matter was discussed by the three of them at a meeting on September 10, 1985.

The reference to a meeting on September 10, 1985, is based exclusively on ambiguous notes contained in Col. North's notebooks. Since Col. North was never asked about that meeting or those notes, we cannot tell when they were made, let alone whether they were accurate or reflect a meeting which actually occurred.

Moreover, despite being subject to lengthy depositions and being totally cooperative with these Committees, neither Col. Steele nor Mr. Gregg has been asked whether such a meeting ever took place and if so, whether the quoted material was discussed. In short, there is simply no credible evidence against which the meaning or accuracy of these notes has been tested.

Indeed, the evidence before the Committees, to date, suggests the contrary. North recruited Rodriguez to perform the function of obtaining support for the use of the Central American country's air base, and that he did so, with permission to use North's name. North directed Rodriguez not to inform Gregg and his office about this (Rodriguez's) involvement, and he didn't. Moreover, the majority's own account of events indicates that Rodriguez was first considered by North as a possible source of assistance when Col. Steele suggested that idea on September 16, 1985; 6 days after this supposed meeting between North, Steele, and Gregg. Therefore, there is no evidence to suggest that North's private resupply operation was discussed on September 10. And finally, the reference made in Chapter 3 to Gregg not knowing about a resupply operation prior to the summer of 1986 is not even accurate. A close reading of the very pages cited by the majority to Gregg's deposition indicates that he admitted to knowing in early 1986 about an informal, non-lethal, supply operation funded by American citizens. Gregg Dep., 6/18/87 at 26-28.

Let us shift focus now to August 1986.** On August 8, Rodriguez met with Gregg and Watson and told them about North's involvement with the resupply operation and possible profiteering by Secord and his associates.*** Rodriguez's disclosures on the eighth of August, and Gregg's ensuing conversations with North's deputy, Robert Earl, prompted Gregg to call a multi-agency meeting on August 12 to alert the agencies of the problems Rodriguez felt deserved their attention.[19] In other words, when Bush's staff became aware that some aspects of the resupply effort might be harmful to the Resistance, the staff met with the appropriate agencies (State, CIA and Defense) and told them of the potential problem. Gregg did not, however, bring the matter to the Vice President's personal attention.

National Security Council Staff

Robert McFarlane and John Poindexter appear to have had different views of what the President wanted, and what the law would allow, the NSC staff to do. It is important to be clear, however, that with the possible exception of some small fraction of NSC staff salaries, overhead, and small amounts of travel expenses—all of which could legitimately have been used in any event to maintain contact by the NSC staff with the Resistance leadership and others—no appropriated funds were devoted to the efforts discussed below.

Robert McFarlane testified that he believed (1) that the NSC staff was covered by the Boland Amendment, and (2) that one of the principal purposes of the amendment was to prevent the government from raising funds in support of the Resistance.[20] He testified that he took this position for political reasons, not on the basis of an analysis of the law.[21] It should be noted, however, that although McFarlane says he was quite vocal on the point of NSC coverage, Commander Paul Thompson, formerly the NSC's legal counsel, has a different recollection. Thompson said that he remembers a discussion in which he and McFarlane considered whether the NSC might conceivably be covered and then decided that the issue was moot because nothing the NSC staff was doing would be a violation even if it were covered.[22] Thompson also remembered a conversation with Bretton Sciaroni, the counsel for the Intelligence Oversight Board.

> I told him that we at NSC Staff had already determined that the NSC Staff was not an intelligence agency under that definition. But the real message I left with him was that McFarlane had already represented to the members of Congress that whether or not we were subject to the Boland Amendment, we considered ourselves subject to it, or words to that effect. The reason being that Mr. McFarlane had already made the determination that we had not violated the Boland Amendment, so it was almost a moot argument to make.[23]

Whatever McFarlane's contemporaneously expressed view of the Boland Amendment might have been, he testified that his understanding of the role of the NSC staff was that it was limited to providing political support and direction for the Resistance movement, and did not include fundraising.[24] He also specifically denied that the President intended him to provide military assistance to the Contras.[25] Poindexter testified, however, that he was familiar with, and approved the details, of North's work as a "switching point" for activities related to the democratic Resistance advice.[26] Poindexter also said that the President was generally aware of North's role, and that he believed the President had implicitly authorized the NSC staff's efforts.[27]

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* Phyllis Byrne, the secretary in the Vice President's offices who typed these memos, testified that after Rodriguez had requested the appointment, she asked Colonel Watson about the visit's purpose. She said that Watson gave her the language she used for the "purpose" section of the scheduling proposal when she typed it on April 14. Two weeks later she simply reused the same language for the Vice President's scheduling memorandum. (Byrne deposition, June 16, pp. 12-13.) Colonel Watson has testified not only that he has no recollection of providing Ms. Byrne with that information, but reiterated that he would have had no reason at that time to connect Rodriguez with resupply at all. Furthermore, Watson said that he had no recollection of reviewing the scheduling memorandum either alone or with Rodriguez before the meeting. (Watson deposition, June 16, pp. 27-40.) Similarly, Gregg does not remember reading that language at either the proposal or memorandum stages, and says he would never have phrased such a discussion in that manner. (Gregg deposition, May 18, pp. 32-33.)

**Watson's notes, which were exhibits to his deposition, indicate that three times during the first week of August 1986, either North or Earl made resupply-related references to Watson regarding Rodriguez's activities in Central America. Each time, according to Watson, he asked about the statements, only to be rebuffed. (Watson Dep., 6/16/87, at 43-55.) Ironically, the apparent purpose of these asides, according to Watson, was to get him (and Gregg) to "admonish" Rodriguez about whatever it was he was supposedly doing to harm the resupply effort.

***According to all three, however, Rodriguez did not outline his own resupply role until December 1986, weeks after North had been reassigned. (Rodriguez Test., *Hearings*, 100-3 5/27/87, at 315; Rodriguez Dep., 5/1/87 at 43; Watson Dep., 6/16/87 at 34; Gregg Dep., 5/18/87 at 81.

Whatever the differences in their understandings, McFarlane and Poindexter both chose North to carry out their instructions. North claimed his activities throughout were fully authorized. McFarlane claimed that several of North's actions during his tenure were not authorized, but Poindexter said that he had generally authorized North's actions.

During McFarlane's tenure as National Security Adviser and after the previously appropriated funds had been used up in or about June of 1984, the National Security Council Staff engaged in a series of activities described below.

Fundraising From Third Countries

Beginning in June of 1984, Country Two provided what ultimately amounted to $32 million for support of the Resistance; the support was provided at the level of $1 million per month in 1984, and then in a lump sum of $25 million in early 1985. It is clear from the hearing record that the NSC staff was engaged in an effort to encourage Country Two, and other third countries, to support the Contra cause, both politically and financially. Even though McFarlane and North both claim not to have "solicited" funds, McFarlane personally encouraged contributions, unsuccessfully from Country One and successfully from Country Two. North, occasionally using Gaston Sigur who was then on the NSC staff, General Secord and General Singlaub, encouraged contributions from several other countries as well. It is important to note, however, that there is no evidence of any kind in the records of the Committees which suggests that any quid pro quo was sought or received in return for any third country contribution to the Resistance.

Raising Private Funds in Support of the Resistance

Beginning in the spring of 1985, a group of private individuals began to raise funds to support the Contra cause. North met with the fundraisers and their potential contributors, alone and in small and larger groups, and helped acquaint these groups with the humanitarian and military needs as well as the political and military situation of the Resistance. In addition, North helped to arrange White House briefings for certain groups of contributors on a few occasions; the President spoke at some of these briefings. The President believed, and was consistently briefed, that the private groups were using their funds to purchase television advertising to promote the Contra cause and to engage in other such public awareness programs on behalf of Administration policies. There is no evidence that North was aware of people using the promise of such meetings to obtain contributions of a certain minimum amount. Generally, North did not personally solicit funds from contributors, although the record is clear that he was acting in general concert with individuals who were soliciting funds and that he did direct the disposition of some of the funds so raised. From the record, it also appears that the nature of North's presentations to groups was that he tried to present the reasons behind the President's policy of support for the democratic Resistance and opposition to the Sandinistas. These presentations apparently were similar, if not identical to ones he gave to many other groups of noncontributors to persuade them to support the President's policy.

Assisting in Arms Purchases and Humanitarian Supplies

During McFarlane's tenure as NSC Adviser, North asked General Secord, by then a private citizen, to assist the Contras in their arms procurements. North met with Secord and, on other occasions, with General Singlaub to obtain their assistance as private citizens. The arms were purchased with third country or private funds. It seems clear that Colonel North discussed the proposed procurements with Resistance leaders, and also made his own suggestions for appropriate procurements.

North appears to have had detailed knowledge about what was being shipped, and the shipment details necessary to coordinate air drops with the Resistance. In fact, there is evidence that North intervened on at least one occasion with officials of a foreign country to persuade them to allow a proposed shipment of arms which had been purchased with private funds to proceed.[28] McFarlane testified during his second appearance that he did not regard these activities as having been authorized by him.[29]

Giving Military Advice to the Democratic Resistance

In addition, during McFarlane's tenure and during the period of the most restrictive Boland Amendment, North appears to have given strategic military advice to the democratic Resistance. Secord testified that North actively participated in a "program review" meeting in Miami in July 1985, a principal purpose of which was to discuss the overall military situation of the Resistance and to decide how their military effort should be reoriented.[30] North provided military advice of a general nature to the Resistance on the other occasion as well.[31] McFarlane claimed he was not informed of the Miami "program review" meeting by North, or of other specific occasions on which North gave military advice, although he also testified that he did not regard such advice as central to the Boland Amendment's restrictions.[32] North specifically denied having given tactical military advice on specific military operations.[33]

Giving Intelligence to the Democratic Resistance

During the entire period of the Boland Amendment's restrictions, both the CIA and the NSC were expected to continue obtaining information about the activities of the democratic Resistance as part of their normally assigned duties. Obtaining detailed knowledge about the Resistance by all normal intelligence gathering methods, including direct conversations with Contra leaders, was clearly consistent with the law at all times.

During McFarlane's tenure, North provided intelligence to the Resistance by conveying information provided to him by certain officials of the Central Intelligence Agency who testified they did not know North was passing it to the Contras. Some of the information was principally of military significance, and was provided for defensive purposes, while other information could have been used for humanitarian purposes as well. The CIA could not have passed the information directly, under the agency's own cease and desist order, which, as we indicated earlier, went well beyond the requirements of the Boland Amendment. North also developed an informal intelligence source of his own in the person of Robert Owen, whom he used as a secret courier and transfer agent for cash and intelligence.

Private Air Resupply Network

In the fall of 1985 after the "program review" meeting in Miami, North approached Secord to develop a privately funded private air resupply network to support the Resistance. General Secord proceeded to establish this network during late 1985 and ran it through early October 1986, when a resupply airplane carrying Eugene Hasenfus was shot down over Nicaragua. This air resupply network delivered both lethal and humanitarian cargo to Contra forces operating within Nicaragua. The air resupply network was funded by private contributions, the Iran arms sales and some third country funds.

As part of the development of the resupply network, North, through other U.S. officials in Central America, such as CIA station chief "Tomas Castillo" and Ambassador Lewis Tambs, sought the creation of an emergency airstrip in a neighboring Central American country. It appears that this was done with Admiral Poindexter's approval; McFarlane, who had essentially left the NSC by then, claimed he did not know about the airstrip or about instructions to Ambassador Tambs to open a "Southern Front."[34] McFarlane testified that North did not tell him about Secord's involvement in this resupply network, though he stated that North did indicate that "occasionally" air deliveries were made to the Resistance. McFarlane denied he had authorized North to direct the air resupply of arms to the Contras.[35] Poindexter said he was aware of the air resupply network. He regarded it as a byproduct of Colonel North's other efforts for the Resistance, within the scope of the President's direction to the NSC staff.[36] In the course of the resupply effort, North provided some people with KL-43 encryption devices. This occurred *after* the law was changed to permit intelligence agencies to provide communication assistance and information to the Resistance.

Conclusion

In sum, the NSC's activities, aside from its normal duties, generally fell into two categories. One involved information sharing with the democratic Resistance and encouraging contributions that—with the possible exception of the diversion—were perfectly legal. Activities such as these could not constitutionally have been prohibited by statute. The second category involved North's military advice to the Resistance and detailed coordination of the resupply effort. Since the NSC was not covered by the Boland Amendment, these activities were clearly legal. But even if one assumes the NSC were covered, we showed earlier that the amendment did not prohibit general military advice and resupply coordination. Some of these latter activities, however, perhaps could have been reached by Congress without violating the Constitution. It was to protect these unpopular, but legal activities from possibly being made illegal that we believe the NSC staff misled Congress. There is no evidence that the President knew more than general information about this side of North's activities, or anything at all about the deceptions of Congress.

State Department

Little or no evidence surfaced during these hearings to suggest that the State Department was used wittingly or unwittingly to circumvent the Boland Amendment. Individuals such as Louis Tambs (Ambassador to Costa Rica) and Robert Owen (who had a contract relationship with UNO under a grant agreement with the Nicaraguan Humanitarian Assistance Office, or NHAO) did assist North with the resupply effort, but this was done without the knowledge and blessing of their superiors at the Department. Owen's assistance arguably took place during his "off" hours, but Tambs' assistance with the establishment of the Point West airfield was clearly done in the course of his long, ambassadorial day. Even Tambs' activities, however, fell within the normal, *legal and constitutionally protected* scope of activity for an ambassador. His error was to bypass his superiors in the State Department by reporting outside channels to North.* That is, the error—like that of a CIA station chief, "Tomas Castillo"—was a matter of violating his own department's policy rather than violating the law.

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*Ambassador Tambs had been a friend of Col. North's going back to 1982 when Tambs was a consultant to the NSC. Later when Tambs was the Ambassador to Colombia, North personally

Robert Owen's activities received a great deal of attention during the early days our public hearings. The examination of his role during the period of his NHAO contract seem to proceed upon two suspicions: (1) that North had placed Owen in the NHAO program to be his eyes and ears in Central America; and (2) that North had also done this to gain access to NHAO facilities to assist the covert resupply effort. The major problem was how to reconcile his "off-hours" assistance with lethal aid drops, with the humanitarian purposes NHAO was designed to accomplish. The Boland Amendment clearly would have prohibited the use of NHAO resources for lethal assistance, and Owen did not step over that line. As a limitation on appropriations, the Boland Amendment does not cover a person's private time. However, Owen's contract with NHAO reads as if it may well have prohibited such off-hours activity, even if the Boland Amendment did not.[37] In any event, Owen was not totally forthright with the State Department about the assistance he gave North. In that respect, he joins a long list of people whom North persuaded to work outside normal channels.

Elliott Abrams

The main State Department focus of the Nicaragua side of the Committees' investigation, however, was Elliott Abrams, Assistant Secretary of State for Inter-American Affairs. Abrams was the main spokesman for the Contra program.[38] As chairman of the Restricted Interagency Group (RIG), Abrams therefore was a natural object of suspicion for those opposed to Contra aid.

The theory that seemed to structure the investigation of Abrams' role was that he either knowingly assisted and advised North, or that he realized what North was doing but ignored it to let North keep the Resistance alive while the Administration fought for renewed Congressional aid. There was a third possibility testified to by Abrams, however: that North effectively kept Abrams in the dark. The evidence more clearly substantiates what Abrams said than either of the other, more conspiratorial theories. In this respect, Abrams was more of a victim than a co-conspirator. He was deliberately kept uninformed by North and Poindexter, just as were the President, Secretaries Shultz and Weinberger, the Intelligence Oversight Board's Bretton Sciaroni, and the United States Congress.

Abrams was not engaged in any conduct that even remotely qualified as a violation of the Boland prohibitions or of any other law.* Indeed, on the one occasion he was presented with information about the activities of the CIA's Tomas Castillo, he immediately went to the Secretary of State[39]. This happened about three weeks after Hasenfus's airplane had been shot down. During this period, Abrams appears to have been misled by North and by CIA officials. As a result, he repeatedly informed Congress, the press and the Secretary, to his later chagrin, that there was no Government involvement with the resupply effort.[40] As he himself said during our hearings, his statements were "completely honest and completely wrong"[41]. So convincing was Abram's testimony on this point in our hearings that Senators Rudman and Mitchell, and House Vice Chairman Fascell, characterized Abrams as having been hung out to dry.**

An even better barometer of the extent to which Abrams had been kept in the dark by North was his testimony regarding his knowledge of critical key players and their involvement in the resupply effort and in the Southern Front. With regard to the resupply, Abrams testified that he did not know General Secord, Robert Dutton, Richard Gadd, Rafael Quintero or Felix Rodriguez, let alone what role they were playing in the resupply effort.[42] He stated categorically that neither he nor anyone else at State knew that Owen, in his "off-hours", was assisting North in coordinating lethal drops to the Resistance. He asserted that if he or anyone at State had known this, Owen would have been fired immediately.[43] There is no evidence to challenge those assertions, nor were they challenged by the Committees.

Some on these Committees questioned whether Abrams lived up to the instructions Secretary Shultz gave him to "Monitor Ollie".[44] Underlying the questions seems to have been an assumption that Abrams knowingly averted his glance. To reach this conclusion, however, one has to believe that everyone in government always should act on the assumption that his or her colleagues are potential liars. Business would then be conducted through investigative tech-

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saw to it that troops were sent to the embassy in Colombia to protect Tambs when his life was threatened by drug dealers. Tambs Test., *Hearings*, 100-3, 5/28/87, at 366-67.

* A clear indication of the extent to which the State Department attempted to comply with the Boland Amendment is the level of debate within the NHAO program over what constituted humanitarian aid. As Elliott Abrams testified:

> "This was not something we did carelessly. I remember . . . Ambassador Deumling coming to a RIG meeting and saying the Contras have asked for wrist watches, can I pay for wrist watches. . . . This was deadly serious because of the legal restrictions. We actually debated. Of course, wrist watches weren't lethal aid, but were they humanitarian aid? . . . We ultimately decided . . . wrist watches were okay." Abrams Test., *Hearings*, 100-5, 6/2/87, at 35-36.

** Abrams Test., *Hearings*, 100-5, 6/2/87, at 131, 142, 154. In chapter 7 of the Majority Report, Assistant Secretary Abrams is quoted as having admmitted to these Committees that certain statements that had been made by him were "completely wrong." For some reason, the majority failed to point out that Abrams preceded that admission by noting that while the statements were completely wrong, they were "completely honest." *Id.* at 65.

niques rather than through normal comity. Congress does not apply this standard when it looks at Administration presentations to Congressional Committees, nor should it apply it to relationships inside the Administration. Abrams—like Secretaries Shultz and Weinberger on the Iran initiative, and like several Committees of Congress that asked about North's Contra assistance—proceeded on the assumption that his colleagues were telling him the truth. If they were not, the blame surely belongs more to the deceiver than the deceived.

The other major area of inquiry regarding Abrams was his November 25, 1986 testimony before the Senate Select Committee on Intelligence on the clearly lawful solicitation of funds from Brunei. With regard to the solicitation itself, the only problem that seemed to raise any concern during the hearings was the fact that Abrams gave the Brunei representative a mistyped Swiss bank account number that was provided by Colonel North instead of using another number supplied by the Chief of the CIA's Central American Task Force. The account number North intended to give Abrams was one controlled by General Secord and Albert Hakim. However, despite theories and suspicions to the contrary, Abrams' selection of that account, on the advice and with the blessing of his superiors at State, was based on his belief that it was an account controlled by the Resistance. His selection of that account was not part of a clandestine venture calculated to assist Lake Resources and the Secord-Hakim enterprise.[45]

There is no question that Abrams exercised very poor judgment in his SSCI testimony by attempting to answer questions regarding third country fundraising in a technically correct, but misleading, manner to protect the confidence of Brunei. Abrams himself described it as an indefensible and foolish act that he greatly regretted.[46] He surely could have asked the Senators to let him refrain from answering the question until he had a chance to discuss the matter with the Secretary. Ultimately, Abrams apologized to the Senate Intelligence Committee for his error, six months before these hearings began.[47]

The CIA's Role

The Central Intelligence Agency was not a major player in the Administration's efforts to help the Nicaraguan Resistance during the period of the prohibitory Boland Amendments. That was partly because the amendments explicitly limited the CIA and other intelligence agencies. In addition, the CIA, as an agency, wanted to avoid even coming close to the edge of the law. As Admiral Poindexter said in our public hearings, "They wanted to be careful and Director Casey was very sensitive to this, they wanted to keep hands-off as much as they could." [48]

Of course, the agency could not simply keep hands off. For one thing, it was expected throughout this period to continue intelligence gathering and political support for the Resistance. At the same time, the CIA felt it had to be responsive both to Congress's mandate and to the Administration's strong support for the Contras. The result was an extremely difficult situation for career professionals who had to implement policy at the operational level. The Chief of the Central American Task Force described his feelings this way:

> I knew almost from the beginning that I was caught between the dynamics of a giant nutcracker of the Legislative on the one hand and the Executive on the other, and I was in the center of a very exposed position.[49]

The agency had been traumatized during the post-Vietnam Congressional investigations of the 1970s. The Latin American division was traumatized once again when five reprimands were issued as a result of the agency's role in helping to prepare a manual for the Resistance that some interpreted as talking about assassination,[50] a technique the U.S. was explicitly prohibited from using. As a result, the CIA was very concerned throughout this period with protecting itself, and the government's future intelligence capability, from political retaliation.[51] Two different effects flowed from this. First, as a matter of internal policy, the CIA regularly issued extremely conservative guidelines that avoided taking legally defensible actions for political reasons. Second, we believe this posture, and Director Casey's own protective feelings toward the agency, contributed to Casey's decision to work closely with Col. North.

Because of their efforts to avoid both sides of the nutcracker, four of the CIA's career civil servants find themselves the subject of persistent reports suggesting that their careers may now be on the line. The four include (1)"Tomas Castillo" (a pseudonym), who was chief of station in a Central American country, (2)the Chief of the Central American Task Force, ("C/CATF") (3)Duane (Dewey) Clarridge and (4)Clair George, the deputy director for operations (DDO). Castillo is now on duty pending a final determination of his status. The others have been the subject of press reports. We discuss the major allegation about Clarridge in our section on the legal issues raised by the Iran initiative. For the others, the main questions all grow out of the CIA's relationship with the Nicaraguan democratic Resistance during the time of the Boland Amendments.

There is substantial conflict in the testimony we have received, particularly between Castillo and Task Force Chief. It is impossible for us to resolve all of these conflicts in our own minds. Our bottom line judgments, however, are as follows:

—The CIA tried as an organization to work within the Boland Amendment, and succeeded.

—The essential dispute between Task Force Chief and Castillo is whether Task Force Chief's policy guidelines were clearly articulated, whether Castillo overstepped those guidelines, and whether Castillo properly informed his superiors of what he was doing.

—The policy guidelines themselves, which should have been written more clearly, were issued for political reasons, and not because Task Force Chief thought Castillo had overstepped the CIA's legal authority.[52]

—Finally, we do not believe these individuals deserve to pay with their own careers for the political guerrilla warfare that was going on over Nicaragua between the President and a vacillating Congress.

We will not dwell on the legal issues here. At the end of the Boland Amendment chapter, we discussed an internal CIA legal memorandum with which we agree. That memorandum, it will be remembered, argued that it was legal for the CIA to:

> provide information involving safe delivery sites, weather conditions, hostile risk assessments and the like to assist the Nicaraguan Resistance in their resupply activities where the CIA's role did not amount to participating in the actual delivery of material or in planning, directing, or otherwise coordinating deliveries during the course of or in the context of specific military engagement.[53]

This legal opinion should have been written in early 1986, instead of a year later.[54] But it was not, and people had to make judgments on the ground. We believe their judgments were legally correct. Nevertheless, a few of them have been controversial.

In judging the agency's activities to support the Resistance, it is important to keep the level of assistance in perspective. Tomas Castillo was the CIA official who worked most directly with the Resistance's private resupply network. He apparently was far more active in this respect, for example, than the passive stance of the CIA elsewhere in Central America. Despite this, he has testified that he spent only about one-tenth of one percent of his time in 1986 facilitating the resupply effort.[55]

The Task Force Chief was a member of the Restricted Interagency Group, or RIG, along with Abrams and North. In this capacity, he had plenty of opportunity to see how North had become the "point man" for the Administration's Contra policy. According to the Task Force Chief, constant feuding among RIG members before Abrams became Assistant Secretary, eventually led to a situation in which power gravitated toward North.[56] In addition, North managed to develop a relationship with Castillo,* in which Castillo—like Ambassador Tambs—was willing to work with North outside of normal channels. Castillo said he disagreed with the Task Force Chief on various policy matters and hoped he could get his voice heard through North.[57] North claimed that Casey knew Castillo reported to North.[58]

The relationships between Castillo, North and the Task Force Chief obviously led to some misunderstandings and missed communications. The main issues on which these Committees focused were the development of an emergency airfield and Castillo's role in passing useful overflight intelligence to the private suppliers. The last issue also has led to a dispute over the Task Force Chief's instructions to Castillo and Castillo's response.

Southern Front Air Strip

Castillo and the Task Force Chief corroborate each other, and the other evidence we have seen, on the absence of a significant CIA role in conjunction with the construction of a privately owned, emergency landing strip to help the Southern Front resupply effort. Castillo did admit that he was "probably" the first to have the idea that the air strip should be built.[59] Castillo testified that a resupply operation was a logistical necessity to supply the insurgents he wanted to see moved out of a neighboring country into Nicaragua. He considered the move to be important politically, because the Resistance's presence in the other country was causing resentment in that other country.[60] The airstrip was in turn required for the success of the resupply operation.

Castillo himself, upon specific instructions from the CIA,[61] took no concrete steps to assist in the plan to construct an airstrip, other than to visit potential sites on one occasion, on his own decision, as an observer with Robert Owen.[62] Castillo specifically denied that he instructed Ambassador Tambs to seek authorization for the airstrip from local officials.[63] He testified that Ambassador Tambs' goals with respect to creation of a Southern Front were based on instructions Tambs received from Oliver North, but Castillo denied North asked for the airstrip.[64] Castillo felt his role was "passively [to] monitor" the activities of the private benefactors with respect to the airstrip; he knew those activities were being coordinated by North.[65]

The Task Force Chief's testimony parallels Castillo's on these points. There is no evidence to indicate that the Task Force Chief, on his own or on behalf of the Agency, instructed or suggested to anyone, that Castillo should establish a Southern Front for the Contras. He categorically denied (as did Elliott Abrams) ever knowing about, let alone agreeing to, North's alleged discussion with Tambs and Castillo about the necessity for opening a Southern Front.[66] Indeed, the first time he can recall learning about the airstrip was in a brief conversation with Castillo at a meeting on December 9, 1985. The Task Force Chief's best recollection was that he was "worried and concerned" when Castillo indicated that it was being built and that Castillo did not mention who was doing the building. He simply assumed that it was being built by the private benefactors and the Task Force Chief cautioned Castillo to make sure that whatever he was doing was legal.[67]

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* As with Tambs, North developed a personal friendship with Castillo. The North and Castillo families vacationed together in February 1986. See Castillo Test., *Hearings*, 100-4, 5/29/87, at 8.

Several months afterward, when North started showing pictures of the work being done on the airstrip at the conclusion of a meeting of Administration officials, the Task Force Chief had to pull him aside to caution him about the wisdom of showing such pictures. It was at that point that the Task Force Chief became concerned that North might not only be exceeding the boundaries of the politically acceptable in his dealings with this highly controversial program, but flaunting it before others. He realized he did not have the power to control North. "I was going to keep the agency and myself within the bounds of propriety and legality," but "there were things that were beyond my powers." [68]

Providing Intelligence for Air Resupply

In February 1986, General Secord complained to Director Casey that the air resupply effort was not getting any help from the Central American Task Force.[69] At about this same time, in February, North distributed KL-43 communications encryption devices that he had obtained from the National Security Agency to Secord, five people in Secord's resupply network and Castillo. North also kept one for himself.[70] It should be noted that these devices were distributed after Congress, in December 1985, passed a law specifically authorizing intelligence agencies to share intelligence with the Resistance, and to spend money to help the Resistance with communications.

Castillo testified that he received a KL-43 machine from North, through Rafael Quintero, in order to relay drop zone information between the Southern Front Commanders to the private benefactors.[71] From this point forward, Castillo was described by both General Secord and Robert Dutton as having been very helpful—Dutton used the word "critical"—to the resupply effort.[72] Castillo's facilitation of the efforts of the resupply operation involved the passing of information such as the location of proposed drop zones and times back and forth from the southern front commanders to the private benefactors.[73] During the Spring, Castillo also requested intelligence such as hostile risk assessments and flight vectors from the CIA to support the flight activities, and filed intelligence reports concerning the results of these activities.[74] Castillo specifically denied that he was involved in the planning of any of the resupply flights.[75] He also denied, in response to a point made by Dutton, that there was any United States Government involvement in obtaining permission for the refueling of two resupply flights at a Central American country airport.[76]

Castillo testified that the Chief of the Latin American Division ("Division Chief") and the Task Force Chief knew of his activities,[77] and the above cited cable traffic from the Spring would bear him out. The first successful lethal air drop was in April, and was supported by cabled intelligence from headquarters. No one in the operations directorate knew, however, about the KL-43 until the Division Chief designate's maiden visit to the country in April 1986.[78] Castillo testified that he asked the new Division Chief for assurance that relaying information with the KL-43 between the private benefactors and the Resistance was legal under the Boland Amendments. He said that the Division Chief designate assured him he would look into it upon returning to Washington.[79]

The Task Force Chief testified that his superior, the Division Chief, never informed him of this discussion with Castillo.[80] The Task Force Chief also said that he did not know about Castillo's direct contact with the private benefactors until a May 1986 CIA officials' meeting that he, Castillo and the Division Chief attended. He said he was surprised to learn at that meeting how closely Castillo had been dealing with the private benefactors.[81] At the meeting, Castillo said that he let it be known that he thought the fact that he was the communications link between headquarters, the Resistance and the supply operation, presented a "problem." He suggested, therefore, that the agency train someone from the Resistance to take over that role.[82]

On May 28, the Task Force Chief sent Castillo the following message:

> [Headquarters] wishes to reaffirm with . . . guidelines that no repeat no . . . materiel or monetary support can be provided to UNO/FDN or UNO/South representatives. . . . can provide advice and commo [communication] equipment as approved by hqs. and can engage in intelligence exchange as approved by hqs.[83]

After this cable, the agency worked to find and train an UNO communicator. At this point, the President's $100 million aid package was going through the Congress. On June 24, a Resolution of Inquiry into North's support of the Resistance was filed in the House, in a move whose timing was obviously meant to influence floor votes. The next day the House, in a major reversal, voted an aid package for the Contras.

On July 12, just 17 days after the House vote, the Task Force Chief sent a vaguely worded, confusing cable that read, in part, as follows:

> Headquarters has reviewed our commitment to provide secure communications. . . . We have taken a second look at the commo link. To date we have maintained our distance from the private

> benefactors (PB) who are providing assistance to the Resistance and have repeatedly briefed Congress that we do not have any relationship with the PB's. The proposed program of assistance would change our policy. . . . There have been numerous allegations of violations of law by PB's. We do not have a firm handle on whether all of the allegations floating around are false. . . . We have come too far at this time to let the solid operations that [deleted] has built to be jeopardized by elements which we are unable to control.[84]

The Task Force Chief and Castillo have very different interpretations of this cable. The Task Force Chief says it was a "cease and desist" order, especially in light of the one he had sent in the end of May.[85] It is interesting to note, however, what it was he was supposed to cease and desist doing. The Task Force Chief describes the cable as telling Castillo, in effect, to break all contact with the private benefactors.[86] Based on his own testimony, the Task Force Chief assumed Castillo would still continue to get information to the resupply operation, but would work directly with the Resistance rather than the private benefactors.[87]

Castillo, in contrast, saw it as saying that what he was doing "to date" was acceptable. The outstanding feature of the cable, from his point of view, was that headquarters was telling him he was not going to get a communicator, but seemed to expect [redacted] to continue to be ready to get intelligence information to the resuppliers. "They were satisfying their situation, but not mine," Castillo said.[88]

As we read the cable, in context, the following points seem to stand out: (1) Headquarters was concerned primarily about the current legislative situation in Congress, and with representations that had been made to Congress. The concern, in other words, was political rather than legal. (2) Castillo had to address a tough set of problems on the ground. (3) The cable was not written clearly, if the intent was "cease and desist." Cease and desist orders can be, and often are, written simply without all of this cable's ambiguities. (4) If the Task Force Chief was trying to tell Castillo to use an UNO "cutout" to pass information to the resuppliers, he should have said so clearly. Of course, there would have been no legal difference between working directly with the suppliers or indirectly, through the Resistance. The difference, as seen by the Task Force Chief, was a domestic U.S. political one.

We want to make clear, as we interpret the cable, that we are not disputing the Task Force Chief's statements about his intentions. If we assume both the Task Force Chief and Castillo are telling the truth, as seems likely to us, it would mean that the Chief sent a poorly worded cable that let the sender and receiver reach different conclusions, with each reading his own problems and preferences into its meaning. The problem, in other words, appears to us to have been one of missed communications. That would not be the first time this has happened, nor will it be the last. Administrative errors such as these should not force the end of a career.

Congressional Testimony of October 1986

In September, when the Task Force Chief learned of the final airdrops coordinated by Castillo, he assumed that Castillo must have somehow found a way to assist without being in the middle of the operation and thereby placing the Agency at political risk.[89] The political problem came to a head in mid-October, after Eugene Hasenfus' airplane was shot down, when one of the Agency's people learned that Castillo had used a KL-43. Upon relaying that information to the Task Force Chief and Division Chief, an internal investigation was instituted.

Assistant Secretary of State Abrams was informed, on October 23, of this potential U.S. Government involvement in this network.[90] Abrams immediately informed the Secretary of State about this surprise turn of events which potentially undercut his prior Congressional testimony and media statements that there was no United States Government involvement with Hasenfus or with the resupply effort. This may have been particularly surprising to Abrams, because the Task Force Chief and the Deputy Director for Operations, Clair George, had been sitting next to him when he gave that unqualified testimony. Questions about George's statements, and the Task Force Chief's silence in the face of the Assistant Secretary's blanket denials, became a third major focus of the Committees' inquiry into the CIA's role.

George had advised the House Intelligence Committee on October 14, 1986, that the CIA was not involved in "arranging, directing, or facilitating" the private resupply missions.[91] Significantly, George stated that he could not speak for the rest of the U.S. Government.[92] Abrams spoke after George and expanded the claim, without knowing its falsity, to cover the whole government. The Task Force Chief stayed silent. The Task Force Chief knew Castillo had been "facilitating" the resupply effort in the spring, but may have thought Castillo had not done so in September.

In testimony before these Committees, George stated that his denial was based on incomplete information, that the CIA did not organize or conduct the resupply operations, and that he wanted to protect the CIA. He apologized for the problems caused by his testimony.[93] The Task Force Chief also said that he regretted his silence in response to Clair George's unqualified denial of any CIA involvement, and Secretary Abram's denial of any U.S. Government involvement in the Hasenfus flight.[94]

One should not underestimate our concern over misleading testimony. We are satisfied, however, that this was not a byproduct of an orchestrated conspiracy to keep Congress in the dark.

Conclusion

The CIA had to work under difficult, politically charged circumstances. To protect the agency, its personnel steered a wide berth around the prohibitions of the law. This was particularly difficult to do in an environment in which people were dying for a cause the Administration and the agency supported. There were misunderstandings in management, and errors in judgment, particularly in Congressional testimony. But the blame for this situation must rest upon unclear laws, and a vacillating Congressional policy, at least as much as it does upon the career professionals who were faced with the Herculean task of implementing the law.

Private Fundraising

The private fundraising activities in support of the Contras conducted by Carl R. (Spitz) Channell and Richard Miller received considerable attention in the news reports surrounding the Iran-Contra affair. The fundraising efforts were also the focus of early criminal prosecutions by the Independent Counsel, and were explored somewhat during our public hearings. They have also received significant attention in the Majority's Report, where it is portrayed in a lengthy chapter as a project devoid of proper purposes.

We cannot agree with the analysis and conclusions of the Majority Report. We agree that a private fundraising effort organized and conducted by Mr. Channell raised funds for the Nicaraguan democratic Resistance; and we agree that the manner in which the fundraising activities were carried out can be criticized. We are in particular concerned that a rather sizable portion of the donated funds appears not to have actually gone to the Contras. But we disagree with the majority's theme that the fundraising activities represented an illegal conspiracy imbued throughout with criminal intent and improper motivations. Based on the evidence, we see the private contributors as being worthy of praise rather than scorn. For the most part, their actions represented good faith activities of well-intentioned American citizens motivated by a genuine—and completely legal—desire to do what they could to help the Contras in a time of need. The private actions, especially those of the donors, were patriotic responses in harmony with the policies of the President that were designed to rebut the growing spread of Soviet communism in North America. Our basic conclusions are as follows:

—Channell developed the private fundraising organizations and controlled their solicitations. Colonel North did not solicit money. He did not conspire with Channell to commit tax fraud. Any suggestion that North deliberately created or nurtured the fundraising network to provide tax write-offs, tax expenditures, or backdoor Federal financing for the Contras, is wholly without support from the evidence.

—President Reagan had no specific knowledge of the private fundraising efforts. He generally believed the persons he met with had donated to a media campaign designed to generate support for further Contra funding by Congress.

—President Reagan met with individuals in the White House to thank them for their long term support for his policies, not for a particular contribution to Channell's organization.

—This investigation unfairly chastised conservative fundraising efforts that supported foreign policy goals inconsistent with those of the majority of Congressional Democrats. However, the Committees failed to investigate parallel fundraising efforts by organizations that support the Communist forces in Central America, and use Members of Congress in their fundraising.

—Finally, the private fundraising investigation of our Committees needlessly harassed private citizens whose political views happen to be contrary to the views held by the majority, by asking them questions that intruded on their privacy and were irrelevant to the Committees' investigation.

The Channell-Miller Network

The Channell-Miller fundraising network developed as a result of common interests and chance occurrences. The Committees have not uncovered evidence that Colonel North sought to establish a private fundraising group or that he motivated any individuals such as Channell and Miller to operate the necessary organizations. The evidence demonstrates that Channell was the primary force behind the private fundraising organizations. Colonel North was a relatively minor participant.[95]

When Channell left the National Conservative Political Action Committee (NCPAC) in 1982 he possessed a valuable asset—a relationship with contributors willing to donate large sums of money to political causes. He formed a network of organizations, one of which was the National Endowment for the Preservation of Liberty (NEPL), incorporated in 1984 as a 501(c)3 tax exempt corporation. According to section 501(c)3 of the Internal Revenue Code, a tax exempt organization must be "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes." [*]

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[*] Channell also formed several non-charitable organizations around this time period. He formed the American Conservative Trust (ACT) in 1984 as a Federal election political action committee. He also formed the American Conservative Trust State Elec-

NEPL was the major organization Channell used for his fundraising in support of the Resistance, and it is the one whose tax exempt status later became of interest to the Independent Counsel.

Raising Funds for the Resistance

The idea of raising money for the Resistance was Channell's. He identified the Nicaraguan Refugee Fund Dinner held in Washington, D.C. on April 15, 1985 as the event that inspired him.[96] Following President Reagan's speech at this dinner, Channell recognized that his contributors were enthusiastic supporters of the Administration's Central American program. Channell initially intended to raise money for an educational media program designed to win Congressional support for U.S. aid to the freedom fighters. He deviated from his original idea, however, when he realized that his contributors would be interested in donating directly to the freedom fighters instead of to a media campaign. Individuals working closely with Channell believed he chose the content of his fundraising themes for the purpose of drawing out the resources of his wealthy contributors.[97]

There has been an impression created that Channell was working at North's behest. But Channell solicited money for the freedom fighters (from John Ramsey of Wichita Falls, Texas) two months before he even met Colonel North.[98] Colonel North attempted to discourage Channell from raising money for lethal materiel for the Contras on at least two occasions.[99] Channell ignored this advice and directly approached Adolfo Calero, leader of the FDN. It was after learning of the Channell-Calero discussions that Colonel North directed the funds to their most efficient purpose.[100]

Channell's Control

Another sign of Channell's control over his fundraising operation was his relationship with his many consultants. Channell surrounded himself with consultants who had substantive expertise and access to influential political leaders. In March or April of 1985, he retained Richard Miller and his consulting firm, International Business Communications (IBC). Miller and his partner had a contract with the State Department in which they worked closely with the leaders of the Nicaraguan Resistance and with members of the Reagan Administration. Channell used IBC to work on practically every aspect of fundraising efforts for many issues. Channell also retained the services of David Fischer,* Dan Kuykendall, Penn Kemble, Bruce Cameron, Miner and Fraser, the Robert Goodman Agency, Martin Artiano, Eric Olson and others.

Channell perceived a division of responsibility among his associates in the fundraising organization. Channell was the creative force and developed the fundraising concepts for his various projects, not all of which related to the Nicaraguan Resistance. Daniel Conrad handled the administrative matters. Miller, Kuykendall, Fischer and the other consultants provided advice.[101] The clear indication from the record is that Channell—not North or anyone else—was thoroughly in charge of the Channell network of organizations.

White House Role

Although Channell was in charge of his network, two kinds of questions have been raised about his relationship with the Administration. One is whether the President was using the power of his office to help Channell raise funds for the Resistance. The other deals with the level and legality of North's role.

President Reagan

Channell used White House briefings and photo opportunities with the President as a way to thank contributors for their support of Administration policy.[102] The individuals who had a photo opportunity with the President, however, were not being thanked for a single contribution to Channell's organizations. Rather, the President thanked them for their long-term support of his policies. As Channell said, "I don't know of anybody who was thanked by the President solely because of a single act." [103] Channell denies ever telling contributors they could meet with the President if they made a large contribution to his organization.** He did not believe he had any control

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tion Fund (ACT-SEF) as a state political action committee to take advantage of state laws allowing corporate contributions to such entities. In 1983, he formed Sentinel to lobby Congress under the terms of Section 501(c) 4 of the Federal tax code. In the Spring of 1986, Channell formed the Anti-Terrorist American Committee as a federal political action committee to focus on Congressional attitudes towards terrorism. During this time period (1984-1986) Channell also formed other, less active organizations, including the Channell Corporation which was his original for-profit consulting corporation. See Channell Dep., 9/1/87, at 62-65.

* David Fischer, a former special assistant to President Reagan, was instrumental in arranging several meetings at the White House for Channell's contributors. The Majority Report suggests that Fischer and his colleagues, Martin Artiano and Richard Miller, were involved in selling meetings with the President for a set fee. While the evidence suggests that Channell viewed his consulting payments to IBC, Fischer and Artiano as fees for White House meetings, it appears that Fischer himself is as unaware of Channell's view. Fischer's retainer agreement with IBC was based on Fischer's understanding that he would provide consulting advice on a large variety of Channell's public education projects, including most notably a project regarding the strategic defense initiative, and a series of messages celebrating the bicentennial of the U.S. Constitution. Fischer's efforts to arrange meetings at the White House represented a small percentage of his work for IBC.

**During the public hearings, one contributor, William B. O'Boyle said that Channell told him he could meet with the President if he contributed $300,000. See Coors, Garwood and O'Boyle Test., *Hearings*, 100-3, 5/21/87, at 119. During the same day's over photo opportunities with the President and in fact several requested meetings were not agreed to by the White House.[104]

Colonel North

North briefed Channell's potential contributors and directed the disposition of funds after Miller received them. He did not solicit money from contributors and made it his practice not to be present when money was solicited by others. He made speeches to and met with people from whom Channell was trying to raise money.[105] North would brief potential contributors on the weapons needs of the Contras and Channell often would followup by asking for funds directly related to Colonel North's briefing. At times, North also prepared lists of humanitarian and military needs of the freedom fighters that he turned over to Channell. We have not received any evidence to suggest that the items North briefed contributors about were actually purchased. Channell never knew if weapons were ever purchased with the money he sent to IBC.[106]

Conclusions

It is fully legal for private individuals to raise money for weapons, and then send that money to bank accounts controlled by the Nicaraguan democratic Resistance. The information to which Channell pled guilty was not about raising money for lethal aid for the Contras *per se,* but about using a tax exempt corporation, NEPL, to do so. Channell formed several entities in his fundraising network to respond to the complicated tax laws covering charitable and political activities. There is no evidence that indicates North knew about the tax problem, much less conspired with Channell and Miller. This conclusion is supported by the fact that Channell did not know of any contributors who donated money because NEPL was tax exempt who would not have donated if NEPL were not tax exempt.[107] As for Colonel North's other activities, there is no evidence that North instructed Channell to use NEPL to raise money for the Contras.[108] In addition, he did not solicit money from contributors.[109] There can be no question that North knowingly conveyed the impression that he favored what Channell was trying to do, but there is nothing wrong with the White House openly endorsing private activities in support of Administration policy.

Left Wing Private Fundraising

Conservative fundraising organizations have been criticized during this investigation because they have raised money to support policy goals that a majority of the Democratic Members of Congress did not support. Clearly, it is permissible under current law to raise money for foreign political movements, including military activities. If there were any question about this, the Committees should—for the sake of a balanced, fair record—have devoted similar resources investigating organizations that support left-wing forces in Central America opposed to United States foreign policy that use Members of Congress in their fundraising.

Several organizations have opposed United States policy in Central America by sending money and supplies to El Salvador. The most notable is the Committee in Solidarity with the People of El Salvador (CISPES) which Assistant Secretary Abrams described as an organization that "essentially serves as a front for the FMLN guerrillas in El Salvador".[110] According to a 31 page set of State Department cables about these groups that was introduced by Rep. Bill McCollum as a Committee exhibit, CISPES was founded in 1980 by the leader of the Salvadoran Communist Party, Shafik Handal.[111] This Washington, D.C. based organization coordinates efforts of a major U.S. support network. CISPES activities are said to include, among other things, a program to send material aid to Central American struggles and "creative harassment" at public appearances and speaking engagements of individuals who support U.S. policy.[112]

New El Salvador Today (NEST) is an organization that has worked closely with CISPES on fundraising, volunteer training, and other activities.[113] NEST has raised funds for projects in areas of El Salvador controlled by the Communist insurgents.[114]

There have been allegations, included in the State Department cables, to the effect that much of the money received by organizations such as these ends

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hearing, Joseph Coors said he had given money to what he thought was a Swiss bank account controlled by the Contras to buy an airplane for them. The account actually was owned by Lake Resources, a Secord-Hakim company. In addition, in the same hearing, Ellen C. Garwood said that Channell produced a list of weapons, in North's presence, that could be purchased with a contribution from her. We have no reason to believe these kinds of requests were typical. During the hearing, Rep. McCollum made the following statement, which was not challenged by anybody:

> It might appear to the casual observer that the three who are here with us . . . are typical contributors to the Spitz Channell organizations or, in the case of Mr. Coors, more directly to the Contras. But from my understanding of the depositions and various taking of testimony that went on and efforts to get statements from folks before, many many contributors were interviewed and deposed and not asked to testify because they did not have a list like was involved with Mrs. Garwood or they didn't have an occasion where they were suggested to them that they might see the President if they gave money and they didn't give to the Lake Resources account.
>
> I just simply want to make that clear to everybody who is involved—and I think it needs to be—that these three witnesses are not the typical contributors, and in fact, many others gave more money to Mr. Channell's organization.
>
> No list was found in those cases. Nobody else was told that they had to see the President or could see the President if they gave money and no other private contributor, at least that we discovered, received or sent his money to Lake Resources. See *Id.* at 146.

up in the coffers of guerrilla groups, or being used to provide welfare services that help the FMLN's political program in areas the FMLN controls. According to a State Department interview with former Salvadoran leftist guerrilla leader, Miguel Castellanos, the Western Democracies became the largest source of cash for the guerrillas during the 1980s. Castellanos served on the finance committee of the Popular Forces of Liberation (PFL) in 1978 and defected in 1985. He stated that the guerrilla groups set up institutions to collect donations from leftist humanitarian organizations and use that money without concern for its original purpose. Approximately 70% of the money which purported to go for humanitarian assistance actually went for the purchase of arms.

Senator McClure introduced an exhibit which is a fundraising letter for CISPES purportedly written over the signature of a Member of Congress.[115] Another exhibit is purportedly from another Member which states that "NEST is a non-profit, tax-exempt foundation which is sending humanitarian aid to those whose lives are most affected by the violence of the U.S. supported war." [116] The same two Members also hosted a reception for NEST in Washington D. C. on July 10, 1986.[117]

By repeating Castellanos' general statement and mentioning the fundraising role played by two Members of Congress, we do not mean to suggest that we have evidence to prove (1) that Castellanos' general allegation applies specifically to CISPES or NEST or (2) if it applies, that the two Members of Congress knew about the allegation. The point is that we can neither confirm nor deny the allegation because the Committees did not review the subject in its investigation.

The similarities between the conservative and liberal fundraising efforts for Central American groups are striking: both used politicians to support their respective causes, both used tax-exempt organizations, both may have donated money which was ultimately used to buy weapons, both supported foreign policy goals inconsistent with the declared Congressional policy. The primary difference between these two fundraising efforts is that the Committees have publicized the conservative fundraising efforts in an attempt to embarrass the President. If one set of groups was worthy of investigation, then so surely was the other.

Overstepping the Bounds

With the time it saved not investigating groups on the left, the private fundraising investigation has needlessly harassed private citizens who happen to hold conservative foreign policy views. Witnesses were forced to travel long distances and testify concerning money which they legitimately gave to political organizations.[118] Committee attorneys questioned witnesses about their political activity,[119] religious affiliations,[120] educational backgrounds,[121] employment history,[122] political lineage,[123] roommate's political contributions,[124] social associations,[125] and more. The subpoenas issued to many of Channell's contributors required tax returns, correspondence related to Nicaragua, documents concerning political contributions and other broad categories of personal papers, without any apparent effort being made to limit the material to items that fell within the Committees' legitimate mandate to investigate governmental activities.

The Committee used its subpoena powers, and the wedge of a reasonable inquiry into private fundraising, to go on a wide-ranging fishing expedition into irrelevant political issues. For example, counsel asked Martin Artiano if he knew who stole the 1980 Carter debate manuals.[126] David Fischer, who was responsible for Corazon Aquino's very successful American tour, was asked several questions to determine whether he prevented Aquino from meeting with liberal groups at the Kennedy Library in Boston.[127] Counsel inquired of several witnesses whether they had any knowledge of Ambassador Faith Whittlesey's dinner to honor Sir James Goldsmith.[128] Counsel also asked about Roy Godson's efforts to counter Soviet disinformation in Europe.[129] Finally, Carl Channell was asked about President Reagan's Strategic Defense Initiative.[130]

Many other examples could be cited, but these are enough to make the point.* These Committees had

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*Unfortunately, even the non-partisan reputation of the General Accounting Office (GAO) has been tarnished during this phase of the investigation. The incident does not quite fit in with this list of outrageous questions asked of witnesses, but is too important to Congress for us to let it pass without comment. The Comptroller General of the United States sent a letter on September 30, 1987 to Reps. Jack Brooks and Dante Fascell which concluded that the State Department violated a restriction on the use of appropriated funds for publicity. Unlike its normal procedure with a final opinion or report, the GAO issued this letter in time to be used in this report, before its audit was complete and without giving the head of the relevant office or his deputy a chance to hear and reply to the allegations. The opinion fails even to mention, let alone respond to, documentary evidence that conflicts with the conclusions it presents as "facts." We are in no position to say whether the pressure for "timely" publication was generated inside GAO or externally. In any case, the preliminary opinion was then given to the press by counsel in a release with an October 5 embargo date in the name of the two House Democrats who had asked for the audit. See GAO Letter of September 30, 1987 to Reps. Brooks and Fascell, B-229069.

In a letter to Representatives Lee Hamilton and Dick Cheney, Lawrence L. Tracy, Colonel, U.S. Army (Ret.), disputes the factual basis for the GAO Report. Tracy worked for the Office of Public Diplomacy for Latin America and the Caribbean from 1984–1986. Col. Tracy believes that Jonathan Miller's memo discussing "white propaganda" was probably an exaggeration intended to curry favor with the White House. In a thoughtful analysis, Col. Tracy compares the Office of Public Diplomacy for Latin America and the Caribbean to the public diplomacy campaign conducted by the Carter Administration on the Panama Canal Treaty. "Although many in this country disagreed with the Carter policy, I do not recall anyone in Congress calling on the GAO to investigate a legitimate reasons to ask about private fundraising. If Congress wants to be worthy of trust as an institution, however, it has to restrain itself. Just as the President ultimately has to accept responsibility for the actions of any one subordinate who zealously steps over the line, so too must these Committees bear the responsibility for the actions of one of its own staff, even if—or especially because—they were not typical of the Committees' work as a whole.

Conclusion

Our analysis of the past two chapters has largely been about legal questions. It has shown the Administration did stay within the law. By giving the Administration a clean bill of legal health, however, we do not intend to be endorsing the wisdom of everything it was doing. Notwithstanding our legal opinions, we think it was a fundamental mistake for the NSC staff to have been secretive and deceptive about its actions. The requirement for building long term political support means that the Administration would have been better off if it had conducted its activities in the open. Thus, the President should simply have vetoed the strict Boland Amendment in mid-October 1984, even though the amendment was only a few paragraphs in an approximately 1,200 page long continuing appropriations resolution, and a veto therefore would have brought the Government to a standstill within three weeks of a national election. Once the President decided against a veto, it was self-defeating for anyone to think a program this important could be sustained by deceiving Congress. Whether technically illegal or not, it was politically foolish and counterproductive to mislead Congress, even if misleading took the form of artful evasion or silence instead of overt misstatement.

We do believe firmly that the NSC staff's deceits were not meant to hide illegalities. Every witness we have heard told us his concern was not over legality, but with the fear that Congress would respond to complete disclosure with political reprisals, principally by tightening the Boland Amendments. That risk should have been taken.

We are convinced that the Constitution protects much of what the NSC staff was doing—particularly those aspects that had to do with encouraging contributions and sharing information. The President's inherent constitutional powers are only as strong, however, as the President's willingness to defend them. As for the NSC actions Congress could constitutionally have prohibited, it would have been better for the White House to have tackled that danger head on. Some day, Congress's decision to withhold resources may tragically require U.S. citizens to make an even heavier commitment to Central America, perhaps one measured in blood and not dollars. The commitment that might eliminate such an awful future will not be forthcoming unless the public is exposed to and persuaded by a clear, sustained, and principled debate on the merits.

'propaganda' effort. The public was well-served by the national debate that ensued, for the American people came to understand both the costs and the benefits of the Treaty, and were better able to advise their representatives in Congress of their position on the issue. That is the essence of democracy." (See Appendix D to the Minority Report for Col. Tracy's letter.)

Endnotes

1. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 9.

2. *Id.* at 5; North Test., *Hearings*, 100-7, Part I, 7/9/87, at 264-65.

3. *Id.* at 264-65.

4. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 5-6, 21.

5. *Id.* at 17, 23, 27-28; Poindexter Test., *Hearings*, 100-8, 7/15/87, at 54-55. See also Poindexter Test., *Hearings*, 100-8, 7/16/87, at 89, 101.

6. Compilation of Presidential Documents, May 13, 1987, pp. 526-27; "Excerpts From President's Meeting With Editors," The New York Times, May 16, 1987, p. 6.

7. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 17 and 22-24.

8. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 54-55; 7/16/87, at 89.

9. *Id.* 7/15/87, at 54-55; Garwood Test., *Hearings*, 100-3, 5/21/87, at 131, 132.

10. Poindexter Test., *Hearings*, 100-8, 7/20/87, at 3.

11. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 28.

12. Rodriguez Test., *Hearings*, 100-3, 5/27/87, at 300-02, 312. That testimony is corroborated by Donald Gregg and his deputy, Colonel Samuel J. Watson III. See Gregg Dep., 5/18/87 at 46; Watson Dep., 6/16/87 at 21-24.

13. Rodriguez Test., *Hearings*, 100-3, 5/27/87, at 299-300.

14. Id. at 315.

15. Gregg Dep., 5/18/87 at 44.

16. Rodriguez Test., *Hearings*, 100-3, 5/27/87, at 301.

17. Gregg Dep., 5/18/87, Ex. 4.

18. Brady Dep., 10/1/87, at 7-9; Gregg Dep., 5/18/87, at 59; Watson Dep., 6/16/87, at 22-24; Rodriguez Test., *Hearings*, 100-3, 5/28/87, at 324.

19.Gregg Dep., 5/18/87 at 24, 74.

20. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 20, 21-22.

21. *Id.*, 5/12/87, at 128–30.

22. Thompson Dep., 7/24/87 at 11-12. See also 21-25.

23. *Id.* at 14.

24. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 21-22.

25. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 221.

26. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 73-75.

27. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 89, 100-01.

28. Memorandum from North to McFarlane, Dec. 4, 1984, Ex. 32, *Hearings*, 100-2, at 466.

29. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 222.

30. Secord Test., *Hearings*, 100-1, 5/5/87, at 57-60.

31. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 167.

32. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 75; *Hearings*, 100-7, Part II, 7/14/87, at 211.

33. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 167.

34. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 210, 222.

35. McFarlane Test., *Hearings*, 100-7, Part II, 7/14/87, at 248.

36. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 73-75; 7/16/87, at 100-01. See also, 7/20/87, at 2, 5.

37. Ex. RWO-17, Attachment 1, Sec. 4(4), *Hearings*, 100-2, at p. 835.

38. Abrams Test., *Hearings*, 100-5, 6/3/87, at 131.

39. *Id.*, 6/2/87, at 69-70, 98.

40.*Id.* at 64-65.

41. *Id.* at 65.

42. *Id.*, 6/2/87 at 97-98, 102.

43. *Id.* at 102.

44. *Id.*, 6/2/87 at 14 and 6/3/87 at 124-25.

45. *Id.*, 6/2/87 at 45-47.

46. *Id.*, 6/3/87 at 117-18. See also Shultz Test., *Hearings*, 100-9, 7/23/87, at p. 274.

47. Abrams Test., *Hearings*, 100-5, 6/3/87 at 117-18.

48. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 76. See also North Test., *Hearings*, 100-7, vol. II, 7/13/87, at 114.

49. Task Force Chief Test., 8/4/87, at 83.

50. C/CATF Test., 8/5/87, at 108.

51. For expressions of this concern, see C/CATF Test., 8/4/87 at 93 and 8/5/87, at 130; George Test., *Hearings*, 100-11, 8/6/87, at 210-212.

52. Task Force Chief Test., *Hearings*, 100-11, 8/5/87, at 128.

53. Ex. TC-13, *Hearings*, 100-4 at 130.

54. C/CATF Test., *Hearings*, 100-11, 8/5/87, at 126.

55. Castillo Test., *Hearings*, 100-4, 5/29/87, at 51.

56. C/CATF Test., *Hearings*, 100-11, 8/4/87, at 89.

57. Castillo Test., *Hearings*, 100-4, 5/29/87, at 79.

58. North Test., *Hearings*, 100-7, Vol. II, 7/13/87, at 116.

59. Castillo Test., *Hearings*, 100-4, 5/29/87, at 52.

60. *Id.* at 8.

61. *Id.* at 13.

62. *Id.* at 17.

63. *Id.* at 11-12.

64. *Id.* at 13.

65. *Id.* at 17-18.

66. C/CATF Test., *Hearings*, 100-11, 8/4/87 at 98.

67. *Id.* at 95-97.

68. Task Force Chief Test., *Hearings*, 100-11, 8/4/87, at 97-98.

69. Secord Test., *Hearings*, 100-1, 5/5/87, at 71.

70. Secord Test., *Hearings*, 100-1, 5/5/87, at 65-66.

71. Castillo Test., *Hearings*, 100-4, 5/29/87, at 19.

72. Secord Test., *Hearings*, 100-1, 5/5/87, at 62; Dutton Test., *Hearings*, 100-3, 5/27/87, at 233-34.

73. Id at 24.

74. Ex. TC-4, *Hearings*, 100-4.

75. Castillo Test., *Hearings*, 100-4, 5/29/87, at 22.

76. *Id.* at 28-30; Dutton Test., *Hearings*, 100-3, 5/27/87, at 218.

77. *Id.* at 54.

78. *Id.* at 20, 24-26.

79. *Id.* at 25.

80. Task Force Chief Test., *Hearings*, 100-11, 8/5/87, at 28.

81. Task Force Chief Test., *Hearings*, 100-11, 8/5/87, at 110-11.

82. Castillo Test., *Hearings*, 100-4, 5/29/87, at 26.

83. Cable, May 28, 1986, Ex. [C/CATF]-31, *Hearings*, 100-11.

84. Ex. TC-14, *Hearings*, 100-4, 5/29/87.

85. Task Force Chief Test., *Hearings*, 100-11, 8/5/87. at 111-12.

86. *Id.* at 111-12. See also Ex. 3, *Hearings*, 100-1, at 426.

87. Task Force Chief Test., *Hearings*, 100-11, 8/5/87, at 109-11.

88. Castillo Test., *Hearings*, 100-4, 5/29/87, at 47. See also 27, 41, 44-47.

89. C/CATF Test., *Hearings*, 100-11, 8/5/87, at 113.

90. Abrams Test., *Hearings*, 100-5, 6/2/87, at 70.

91. Ex. C/CATF-39, p. 4, *Hearings*, 100-11.

92. *Id.*, p. 17.

93. George Test., *Hearings*, 100-11, 8/6/87, at 164, 165, 168.

94. C/CATF Test., *Hearings*, 100-11, 8/5/87, at 120

95. Channell Dep., 9/17/87, at 49.

96. Channell Dep., 9/1/87 at 167.

97. Miller Dep., 7/3/87 at 61.

98. *Id.*

99. *Id.*

100. *Id.*, at 62.

101. Channell Dep., 9/17/87, at 66.

102. Channell Dep., 9/17/87, at 60.

103. Channell Dep., 9/17/87, at 61.

104. Channell Dep., 9/17/87, at 66.

105. Miller Dep., 7/3/87, at 49.

106. Channell Dep., 9/17/87, at 70.

107. Channell Dep., 9/17/87 at 82.

108. Channell Dep., 9/17/87 at 71, 76.

109. Miller Dep., 7/3/87 at 49.

110. Abrams Test., *Hearings*, 100-5, 6/3/87, at 159.

111. State Department Cable, December 4, 1986, p. 4, Ex. EA-49, *Hearings*, 100-5.

112. Ex. 38, Miller Dep., 9/16/87.

113. State Department Cable, December 4, 1986, p. 3, Ex. EA-49, *Hearings*, 100-5.

114. *Id.* at 2.

115. Ex. EA-48, *Hearings*, 100-5.

116. Ex. EA-47, *Hearings*, 100-5.

117. State Dept. cable, p. 3, Ex. EA-49, *Hearings*, 100-5.

118. Garwood Test., *Hearings*, 100-3, 5/21/87, at 110-12.

119. Fischer Dep., 8/11/87 at 6.

120. Godson Dep., 9/9/87 at 58.

121. Fischer Dep., 8/11/87.

122. Henry Miller Dep., 8/6/87, at 1-2.

123. Garwood Test., *Hearings*, 100-3, 5/21/87, at 112.

124. Channell Dep., 9/17/87 at 27.

125. Henry Miller Dep., 8/6/87 at 40.

126. Artiano Dep., 7/31/87, at 180.

127. Fischer Dep., 8/11/87, at 216-17.

128. Henry Miller Dep., 8/6/87, at 40.

129. *Id.* at 43.

130. Channell Dep., 9/2/87, at 96, 165.

Part IV
Iran

Chapter 8

The Iran Initiative

Simple plots make for stirring fiction. Sometimes, amateur historians fall into the temptation of presenting events as if all lines inevitably and always pointed toward the already known conclusion. That is not the way events happen in the real world. The Iran chapters of the majority report create the impression that its authors have fallen into the amateur historian's trap. The narrative tries to simplify events and motivations for the sake of a story line. That does a disservice to history. The record ought to reflect the complex motives of the participants in these operations. The motives may be difficult to determine, but papering the difficulties over will not help future generations learn from what happened.

The majority report seems alternately to be torn between two theses about the Iran Initiative: that it was strictly an arms-for-hostages deal or that, starting in December 1985 or January 1986, it was driven by a desire to provide funds for the Contras. Additionally, the Iran sections of the report continue the majority's portrayal of the Administration as a gang of lawbreakers who would do virtually anything to achieve their objectives, while invoking an exaggerated fear of leaks to keep the truth about activities from Congress.

This portrayal is patently absurd. The hostages were important to President Reagan. He probably did fall victim to his own compassion, and let their personal safety weigh too heavily on him. But it is clear from all the evidence we have that the initiative was pursued primarily for strategic reasons. We may disagree with the underlying assumptions, or with the decision to sell arms, but any honest review of the evidence must acknowledge these intentions, and with the fact that strategic considerations played an important part in the discussions conducted through the so-called Second Channel.

Similarly, the use of residuals to benefit the Contras was certainly seen as a plus—a "neat idea"—by North and Poindexter. But Contras funding never *drove* the Iran initiative. A sober look at the amount of money involved would make that clear to anyone. At most, the residuals were seen as a peripheral benefit from a policy whose justification lay elsewhere.

We shall show in this section of our report that the Administration did, in fact, substantially comply with the legal requirements. Moreover, the decision not to notify Congress was not based on an anti-democratic obsession with secrecy, but was based on the same sound reasoning that led the Carter Administration to the identical decision not to report operations during the Iranian hostage crisis of 1979 and 1980.

Summary Overview

The United States was taken by surprise when the Shah fell in 1979, because it had not developed an adequate human intelligence capability in Iran. Our hearings have established that little had been done to remedy the situation by the mid-1980's. The United States was still without adequate intelligence when, in 1985, it was approached by Israel with a proposal that the United States acquiesce in Israeli sales of U.S.-origin arms to Iran. This proposal came at a time when the NSC was already circulating a recommendation that the United States consider the advisability of such sales to Iran. Long term strategic considerations dictated that the United States try to improve relations with at least some of the important factions in Iran. The lack of adequate intelligence about the situation inside Iran made it imperative to pursue any potentially fruitful opportunity; it also made those pursuits inherently risky. United States decisions of necessity had to be based on the thinnest of independently verifiable information. Lacking such independent intelligence, the United States was forced to rely on sources known to be biased and unreliable. Well aware of the risk, the Administration nonetheless decided that the opportunity was worth pursuing.

To explore the chance for an opening, the President decided to sell arms to Iran.* Some suggest that this decision stemmed from little more than the President's ignorance, the NSC staff's foolhardiness, and private

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*It is important at the outset to note the small amounts involved. The total arms sold included 2004 TOW anti-tank missiles, 18 Hawk antiaircraft missiles, and some 200 or so types of spare parts for Hawk batteries. Some of the missiles were sold from Israeli stocks with U.S. approval. The remaining materiel came from U.S. stocks. A small amount of perishable intelligence information was also transferred to the Iranians. The amounts involved were trivial, compared to the world arms trade with Iran, which Secretary Weinberger estimated at $10 billion. For the last point, see Weinberger Test., *Hearings*, 100-10, 7/31/87, at 166.

greed. We completely reject this interpretation. The initiative was controversial. We disagree with the decision to sell arms, and we wish that the whole initiative had proceeded with more caution. But despite these reservations, we remain convinced that the decision to pursue some such initiative was *not* an inherently unreasonable one.

The major participants in the Iran arms affair obviously had some common and some conflicting interests. The key question the United States had to explore was whether the U.S. and Iranian leadership actually felt enough of a common interest to establish a strategic dialogue. No one can deny the common U.S. and Iranian interest in opposing Soviet expansion. But how much would that community of interest be felt, acknowledged and acted upon? Iran and the United States have compatible goals in Afghanistan. The question was whether such isolated examples could be broadened into something more substantial.

The initial dealings with the Iranian government were undermined by the unreliability of the intermediary, Manucher Ghorbanifar. Nevertheless, Ghorbanifar did help obtain the release of two U.S. hostages (Rev. Benjamin Weir and Father Lawrence Jenco) and he did also produce high Iranian officials for the first face to face meetings between our governments in five years. At those meetings, U.S. officials sought consistently to make clear that we were interested in a long-term strategic relationship with Iran to oppose Soviet expansionism. The hostages issue was presented as an obstacle to an enhanced relationship that would have to be overcome, not as the objective of the initiative. Colonel North made an extensive presentation to this effect in February 1986; former National Security Adviser McFarlane made a similar presentation in Tehran in May 1986. But the Iranian officials brought by Ghorbanifar seemed to be interested only in weapons, and in using the hostages for bargaining leverage. The full extent of the difference between these approaches finally was made obvious to the United States at the meeting in Tehran, which North, McFarlane and others attended at great personal risk. Ghorbanifar appears to have misled both sides in the preparations for that meeting. Afterwards, the United States suspended discussions arranged by Ghorbanifar, except to complete the transactions already underway.

After the Tehran meetings, the United States was able to approach a very high-ranking Iranian official using a second channel arranged by Albert Hakim and his associates. Clearly, Hakim had business motives in arranging these contacts. Whatever his motives, he did produce contacts at the highest levels of the Iranian government. Discussions with this channel began in the middle of 1986 and continued until December. They resulted in the release of one further hostage (David Jacobsen), and U.S. officials expected them to result in the release of more hostages. Perhaps more importantly, these discussions appear to have considered the possibility of broad areas of strategic cooperation. However, as a result of factional infighting inside the Iranian government, the initiative was exposed * and substantive discussions were suspended. Not surprisingly, given the nature of Iranian politics, the Iranian government has publicly denied that significant negotiations had taken place.

The Reagan Administration's Iran initiative represented an attempt to narrow the differences stemming from the Iranian revolution and the intervening years of hostility. Both sides confronted sharp internal divisions over the issue of rapprochement. In such a situation, the margin between success and failure looms much larger in retrospect than it may seem while events are unfolding. While the initial contacts developed by Israel and used by the United States do not appear likely to have led to a long-term relationship, we cannot rule out the possibility that negotiations with the second channel might have turned out differently. At this stage, we never will know what might have been.

In retrospect, it seems clear that this initiative degenerated into a series of "arms for hostage" deals. But it did not look that way to many of the U.S. participants at the time. In our view, it is simply wrong, therefore, to reduce the complex motivations behind these events to any one simple thesis. Clearly, the participants from different countries, and even those within each country, had different, and sometimes conflicting, motives. Without endorsing or agreeing with the use of arms sales as a tactic, we believe that U.S. officials made a risky, but nevertheless worthwhile effort. To explain why, we shall begin by outlining the strategic importance of Iran.

The Strategic Context

Iran is the largest country in the Persian Gulf region, an area of vital economic importance to the United States and its allies. It is in a strategic position potentially to dominate the world's largest proven oil reserves and threaten the vulnerable pro-Western states of the Gulf littoral.

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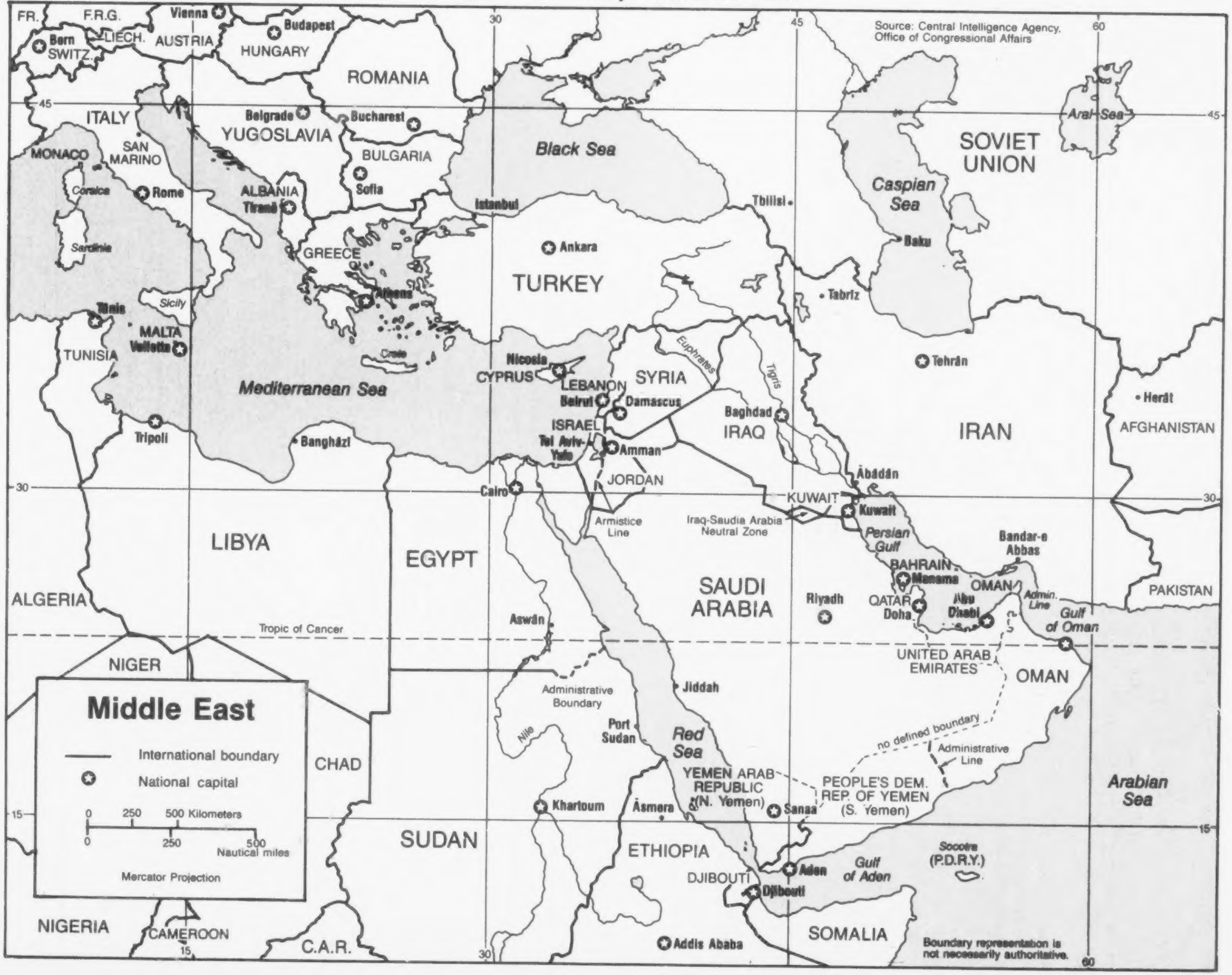
* The most complete public information about this incident appeared in a September 29, 1987 *New York Times* article about the execution of Mehdi Hashemi. The article identified Hashemi as the former director of the office of Ayotollah Hussein Montazeri, "Ayotollah Ruhollah Khomeini's personal choice as his successor in the post of supreme religious guide." *The Times* also said, (1) Montazeri and Speaker of the Parliament (or Majlis) Hashemi Rafsanjani were factional rivals, (2) Hashemi was arrested in October 1986, and (3) the Montazeri/Hashemi faction was responsible for a story that appeared in the Lebanese weekly *Al Shiraa* in early November 1986 describing a May meeting in Tehran between Mr. McFarlane and Rafsanjani. That was the story that led to the Iran arms initiative's unraveling. See John Kifner, "Aide to Khomeini Heir Apparent Is Reported Executed in Tehran," *The New York Times*, Sept. 29, 1987, pp. A1, A13.

For the same reasons, Iran is of critical interest to the Soviet Union which, in addition to seeking access to and control of the West's oil supplies, continues in its historic quest for a warm water port. The United States has long recognized these critical and competing interests. At the end of the Second World War, President Truman was willing to threaten military action to force the Soviet Union to withdraw from areas of Northern Iran it had occupied during the war. In defense of its interests, the United States has maintained a naval presence in the Persian Gulf since 1949.

Figure 8-1. Map of Middle East


FR.
F.R.G.
Bern
SWITZ.
LIECH.
AUSTRIA
Vienna
Budapest
HUNGARY
ROMANIA
ITALY
SAN MARINO
MONACO
Corsica
Rome
Sardinia
Belgrade
YUGOSLAVIA
Bucharest
BULGARIA
Sofia
ALBANIA
Tiranë
GREECE
Athens
Crete
Sicily
Tunis
MALTA
Valletta
TUNISIA
Mediterranean Sea
Tripoli
Banghāzī
Black Sea
Istanbul
Ankara
TURKEY
Tbilisi
Caspian Sea
Baku
SOVIET UNION
Aral Sea
Tabrīz
Tehrān
IRAN
Herāt
AFGHANISTAN
Nicosia
CYPRUS
LEBANON
Beirut
SYRIA
Damascus
Euphrates
Tigris
Baghdad
IRAQ
ISRAEL
Tel Aviv-Yafo
Amman
JORDAN
Cairo
Armistice Line
Iraq-Saudia Arabia Neutral Zone
KUWAIT
Kuwait
Ābādān
Persian Gulf
BAHRAIN
Manama
QATAR
Doha
Abu Dhabi
OMAN
Bandar-e Abbas
Admin. Line
Gulf of Oman
PAKISTAN
SAUDI ARABIA
Riyadh
UNITED ARAB EMIRATES
OMAN
no defined boundary
Administrative Line
LIBYA
EGYPT
ALGERIA
Aswān
Tropic of Cancer
NIGER
Administrative Boundary
Nile
Jiddah
Port Sudan
Red Sea
YEMEN ARAB REPUBLIC (N. Yemen)
Sanaa
PEOPLE'S DEM. REP. OF YEMEN (S. Yemen)
Arabian Sea
CHAD
Khartoum
Āsmera
SUDAN
ETHIOPIA
DJIBOUTI
Djibouti
Aden
Gulf of Aden
Socotra (P.D.R.Y.)
SOMALIA
Addis Ababa
NIGERIA
CAMEROON
C.A.R.
Middle East
International boundary
National capital
0 250 500 Kilometers
0 250 500 Nautical miles
Mercator Projection
45
30
15
60

Source: Central Intelligence Agency, Office of Congressional Affairs

Boundary representation is not necessarily authoritative.

Iran dominates the entire eastern shore of the Persian Gulf; it controls the Strait of Hormuz and can threaten the free flow of oil from the Gulf to the industrial economies of the West. In 1987, as part of its effort to disrupt non-Iranian shipping traffic in the Gulf, Iran has used anti-ship missiles and other munitions to attack neutral oil tankers, and laid mines throughout the Gulf. U.S. and allied warships have been deployed in the Gulf to ensure that the flow of oil is not impeded. Although less than six percent of U.S. oil consumption transits the Gulf, 24 percent of Western Europe's oil and almost half of Japan's total oil consumption must pass through the Strait of Hormuz. Iran alone supplies some five percent of Western Europe's and Japan's oil. Increased oil production elsewhere in the world, and the opening of new pipelines to take oil through Turkey, Iran and Saudi Arabia have somewhat reduced the Gulf's relative importance.[1] Even so, Iran remains able to be a seriously disruptive force to the world's economy.

In addition to its importance to oil supplies and oil routes, Iran, whose population of about 45 million is larger than the other Gulf states combined, is in a position to dominate or destabilize the small, weak, pro-Western countries of the Western Gulf coastal region. Recent Iranian policy toward Kuwait exemplifies the pressure Iran can exert on its neighbors. An aggressive Iran can promote anti-Western Shiite fundamentalism throughout the Middle East, threatening key U.S. allies such as Israel, Egypt, and Turkey.

Events of the last decade have raised the strategic stakes in the Persian Gulf region and given the Soviet Union the chance to expand its influence in an area where it historically has had little. The fall of the Shah, the installation of a revolutionary Islamic regime in Tehran, and the Iran-Iraq war have given the Soviet Union strong incentives to try to improve its position in Iran and the entire Gulf region.

A Soviet-dominated Iran would pose an even greater threat to Western interests than the current radical regime. Such a development, for example, would give Moscow direct land access to warm water ports on the Persian Gulf and Arabian Sea. The Soviet Navy's home ports on the Soviet mainland are frequently ice bound in winter, or provide limited access to the open ocean, making it easier for U.S. and allied navies to contain the Soviet fleet. Soviet land access to a warm water port in this region would seriously endanger U.S. security interests in the entire Indian Ocean region, from the Indian subcontinent to Eastern Africa.

On Iran's eastern border, the Soviet aggression in Afghanistan has further skewed the unstable strategic balance of the region, unsettled Iran's neighbor Pakistan, and left the Soviet Union better-placed to meddle in post-Khomeini Iran. In response to events in the Gulf, the Carter Administration developed a Rapid Deployment Force to demonstrate an increased U.S. resolve to defend U.S. and Western interests there. It was against this background that the Reagan Administration conceived its policy opening to Iran.

On May 17, 1985, just before the United States decided to pursue the Iran initiative, Graham Fuller, the CIA's National Intelligence Officer for Near East and South Asia, produced a memorandum, "Toward a Policy on Iran," reporting that the intelligence community was learning of signs of significant internal unrest in Iran and was monitoring "Soviet progress toward developing significant leverage in Tehran".[2] By the end of 1985, the intelligence community took a less worried view which was reflected in a new estimate published in February 1986.[3]

By mid-1987, however, press reports were beginning to suggest that Fuller's original concern might have been well founded. These reports involved possible Soviet intelligence sites in Iran and a pipeline and railroad through Iran to its long sought after Persian Gulf warm water port.[4] Should these accounts prove true, the 1985–86 initiative might eventually be seen as a farsighted attempt to prevent seriously troublesome developments that could occur after the factional struggle everyone expects to begin when the aged Ayotollah Khomeini dies, if it has not already begun.

Strategic Opening, Or Only An Arms-For-Hostages Deal?

The majority report systematically downplays the importance of strategic objectives in the Iran initiative. We believe, to the contrary, that the record is unambiguous on the following facts: (1) that strategic objectives were important to the participants at all times; (2) that the objectives were credible, (3) that they were the driving force for the initiative at the outset, and (4) that without such a strategic concern, the initiative would never have been undertaken.

One of the most disappointing forms of evidence-slanting throughout the majority's narrative is that it refuses adequately to present the key witnesses' accounts of their own motives, in their own words, from the hearing record. That failure is most glaring in connection with the witnesses' statements about the strategic motives behind the Iran policy. We have no intention of trying to recite all of the evidence here. We are convinced, however, that anyone who reads the material we cite will recognize the bias involved in presenting what purports to be any analysis of the arms sales without including the participants' own explanations of their motivations. The majority may not agree with the Administration's strategic reasoning, but it is simply unfair to ignore it.

The President's words are probably the most important here. Dale Van Atta, a reporter, knew the essential facts of the initiative in February 1986. The President was willing to talk to him on February 24, on the condition that the information not be used until the hostages came home. Van Atta asked the President about the hostages. Instead of answering in kind, the President spoke about strategic matters.

> All right. The Iranian situation. We have to remember that we had a pretty solid relationship with Iran during the time of the Shah. We have to realize also that that was a very key ally in that particular area in preventing the Soviets from reaching their age old goal of the warm water ports, and so forth. And now with the take-over by the present ruler, we have to believe that there must be elements present in Iran that—when nature takes its inevitable course—they want to return to different relationships . . . We have to oppose what they are doing. We at the same time must recognize we do not want to make enemies of those who today could be our friends.[5]

The President's own statements were supported by senior officials in his Administration testifying before these committees. For simplicity's sake, we will cite this material by grouping the references under the substantive topics covered. These included:

—establish a new U.S. relationship with Iran, thus strengthening the U.S. strategic posture throughout the Persian Gulf region;[6]

—counter Soviet influence in Iran;[7]

—lessen Iran's dependence on the Soviet Union and other communist nations as arms suppliers;[8]

—open a channel to pragmatic Iranian officials;[9]

—wean the Iranian regime away from terrorism;[10]

—encourage a negotiated settlement of the Iran-Iraq war;[11]

—protect the northern tier countries—Pakistan, India and their neighbors—and encourage their interest in supporting the Afghan resistance forces;[12]

—protect the southern tier countries—Saudi Arabia, Kuwait, Jordan, Israel and Egypt;[13]

—improve U.S. intelligence capabilities in Iran;[14] and

—discourage Iranian arms exports to Nicaragua.[15]

As we said earlier, one need not agree with these strategic goals, or agree that arms sales were a good way to achieve them, to recognize their importance to the key players. The Administration felt it was crucial to begin making some inroads into Iran, before that country became embroiled in a succession crisis. The last thing we wanted was to abandon the field to the Soviets. It was important to keep looking for opportunities. Unfortunately, our ignorance of the situation in Iran was such that we had few realistic ways to do so.

U.S. Intelligence Weaknesses in Iran

Although the motives were clearly present for trying to develop a new relationship with Iran, the means were not. In an important respect, the Iran initiative had at least one of its roots in an intelligence failure. There are two different intelligence issues raised by the Iran initiative. One is that intelligence gaps or weaknesses influenced U.S. decisions. We agree with this point. The other is that intelligence was "cooked" to match the preconceived conclusions of policy makers. We strongly disagree with this charge, to the extent that it relates to the information generated by the executive branch. We do believe, however, that some officials—most notably, Admiral Poindexter and Director Casey—failed adequately to present the U.S. intelligence community's assessment to the President at a crucial moment of decision.

Let us begin with the issue of intelligence gaps. Gary Sick, who worked on the National Security Council staff during the Carter Administration, described the state of U.S. intelligence in Iran when the Shah fell in 1979:

> I had written a briefing paper for [National Security Adviser Zbigniew] Brzezinski noting that "the most fundamental problem at the moment is the astonishing lack of hard information we are getting about developments in Iran." I commented that "this has been an intelligence disaster of the first order. Our information has been extremely meager, our resources were not positioned to report accurately on the activities of the opposition forces, on external penetration, the strike demands, the political organization of the strikers, or the basic objectives and political orientation of the demonstrators."[16]

General Secord, who became Deputy Commander of the hostage rescue task force in 1980 after the unsuccessful Desert I operation, confirmed that the lack of intelligence was the reason why his combat-ready task force never made a second effort to rescue the hostages.[17]

Faced with the loss of the Tehran embassy and its intelligence secrets, the flight or execution of pro-Western officials and agents, a ruthless secret police network and restrictions on travel to Iran, U.S. intelligence efforts had to start again from scratch. According to new reports, efforts to rebuild our intelligence capability were further devastated by the 1983 bombing of the U.S. Embassy in Beirut, which killed many of the CIA's leading Middle East experts, and by the abduction of the post-bombing Beirut station chief, William Buckley. Before his death as a result of torture, Buckley was allegedly forced to reveal his extensive knowledge of CIA anti-terrorism and other operations in the Middle East.

There was near unanimity inside the government on the weakness of U.S. intelligence in Iran. Director Casey reportedly conceded the point, and his former deputy, John McMahon, agreed.[18] Casey believed that the need for intelligence was one of the main reasons for going ahead with the initiative.[19] Robert McFarlane and John Poindexter both lamented the dearth of intelligence on internal Iranian politics and Iranian support for terrorism, which left them vulnerable and "flying blind". In particular, U.S. policy makers lacked the information necessary to assess the influence and *bona fides* of the Iranian officials with whom they were dealing.[20]

The core problem was a lack of well-placed human agents within Iran.[21] The CIA's Deputy Director for Operations, Clair George, is responsible for clandestine human intelligence collection. He freely acknowledged that the Directorate was not collecting the information necessary to influence or deal with Iran. In the opinion of some intelligence professionals the CIA's weakness of human intelligence collection reflects a long-term shift toward a greater reliance on more exotic, technical collection methods, which are considered "clean" and safe compared to the messy business of running human spies. As Admiral Poindexter said:

> The problem is that with technical means of collection, there is no way that you can find out about intent as to what the people are planning or doing. The only way you can get that is through human intelligence. A satellite will tell you how many divisions or how many tanks or how many airplanes, but it won't tell you what they are planning to do with that.[22]

One problem with human intelligence is that it often requires the use of individuals of dubious reputations. Despite criticism of the use of Ghorbanifar in the Iran initiative, U.S. intelligence may have no choice but to rely on questionable individuals in future operations. As George told the Committees: "If we only served and dealt with the honest and fair, we would be out of business fairly fast." [23] Poindexter made essentially the same point: "Human intelligence is messy, because you have to deal with people. You don't always know if they are telling you the truth or not . . . . [You] have to deal with pretty despicable characters if you are going to get penetration of these organizations".[24]

Faced with this frustrating lack of intelligence, it appears that Admiral Poindexter adopted the view that the Israelis had better information on the situation in Iran. Poindexter was so convinced of this that he even accepted the Israeli view that Iraq gradually was acquiring a battlefield advantage in the war with Iran,[25] even though he knew U.S. intelligence held a contrary view,[26] and the issue would have been open to independent verification.

The Issue of "Cooked" Intelligence

One of the many dramatic charges Secretary Shultz made about his own Administration involved this assessment of the Iran-Iraq war. Responding to Senator Inouye, Shultz said that the failure to separate "the functions of gathering and analyzing intelligence from the function of developing and carrying out policy" [27] resulted in the Administration getting faulty information on which to base its judgments and decisions.

> I hate to say it, but I believe that one of the reasons the President was given what I regard as wrong information, for example about Iran and terrorism was that the agency or the people in the CIA were too involved in this. So that is one point. And I feel very clear in my mind about this point. And I know that long before this all emerged, I had come to have great doubts about the objectivity and reliability of some of the intelligence I was getting.[28]

Despite Secretary Shultz's statement, these committees have found absolutely no evidence to support allegations of intelligence bias within the CIA. As Deputy CIA Director Gates has observed, one of the best guarantees against an intelligence bias is the widespread circulation of CIA analyses on Capitol Hill, particularly the intelligence committees' scrutiny of virtually everything the CIA and intelligence community produces.[29] With the exception of one controversial 1982 report, neither committee has exhibited any concern over the objectivity of analysis within Casey's CIA, despite the committees' often stormy relationship with the Director.* Shultz is also refuted by former Deputy CIA Director McMahon who, in response to a deposition question regarding the Secretary's assertions, said: "It wouldn't happen. This is just so [expletive deleted] outrageous, I can't stand it. That is just so damn false, and I think George Shultz got away with murder on that one." McMahon also said he asked Director Webster "why the hell he didn't challenge Shultz on that." Webster, according to McMahon, said he did ask Shultz, but "I guess he hasn't heard from Shultz yet."[30]

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* The 1982 exception provoked the resignation of Admiral (Ret.) Bobby Inman as a consultant to the House committee. Specifically, Inman—a former director of NSA and a former Deputy Director of Central Intelligence and one of the intelligence community's most respected alumni—gave as his reason for leaving the fact that he had not been consulted on a Congressional subcommittee report criticizing intelligence analyses on Central America. Inman felt that the report, which focused on El Salvador, was "put out on party lines." Inman also underscored, in his resignation statement, that Congressional oversight of intelligence agencies had to be nonpolitical to earn public credibility. He added that "if the country doesn't establish a bipartisan approach to intelligence, we are not going to face the problems of the next fifty years." See Washington Post, October 15, 1982.

Admiral Poindexter's reliance on an Israeli assessment that Iran's position was deteriorating in the war with Iraq was particularly controversial. White House Chief of Staff Donald Regan's notes of a November 10, 1986 meeting of top advisers makes it clear that the President was still using the assessment as a justification for his decision the previous January to sell arms to Iran.[31] Poindexter acknowledged, however, that the assessment differed from that of the U.S. intelligence community. Poindexter had the option, of course, of agreeing with such an assessment over the one he was getting from U.S. intelligence. But he and Director Casey should have felt an obligation to highlight that disagreement at the time it was being used to buttress the proposed January 1986 finding. It is clear from Poindexter's testimony that he did not remind the President at the time that this view differed from the majority view within the intelligence community. The evidence seems to suggest strongly, in other words, *not* that intelligence was "cooked" by U.S. intelligence, but that the views of U.S. intelligence were not properly passed up the line and highlighted to the President.

The Israeli Connection

The Administration's reliance on Israeli intelligence has raised questions about Israel's role in the Iran initiative. That role probably will never be fully understood. The Tower Commission Report,[32] supplemented by some new material in the majority narrative, lays out the basic outline. We have too little confirmed evidence, however, and too many conflicting theories, to sort it all into neat packages.

The immediate background to the Iran arms initiative had two separate strands in 1984. One strand begins with Ghorbanifar's desire to sell arms; the other with an independent review of U.S. policy toward Iran conducted by the NSC. The two strands came together in mid-1985.

Ghorbanifar began trying to approach the United States in June 1984 with the story that he had access to some important figures in the Iranian government who wanted to improve relations with the West. The CIA polygraphed Ghorbanifar, he failed (not for the first time) and the agency issued a "burn notice" to its field personnel and other U.S. intelligence services warning them to treat Ghorbanifar as a known liar. Clair George told the Committees: "You have to work at it pretty hard to get a burn notice out of the Operations Directorate at the CIA." [33]

Over the next several months, Ghorbanifar and Adnan Khashoggi, a Saudi arms dealer, reportedly made several attempts to develop a U.S.-Iran arms relationship.[34] One of the approaches they made in 1984, according to the Tower Commission, was through a former CIA officer, Theodore Shackley. In that approach, the arms dealers specifically linked weapons to Americans held hostage in Lebanon:

> Shackley, a former CIA officer, reported that, in a meeting November 19-21, 1984, in Hamburg, West Germany, General Manucher Hashemi, former head of SAVAK's Department VIII (counterespionage), introduced him to Manucher Ghorbanifar. Hashemi said Ghorbanifar's contacts in Iran were "fantastic." Ghorbanifar was already known to the CIA, and the Agency did not have a favorable impression of his reliability or veracity. Shackley reported that Ghorbanifar had been a SAVAK agent, was known to be an international deal maker, and generally an independent man, difficult to control.[35]

Shackley's report went to the State Department but the department was not interested.

By January 1985, Ghorbanifar was discussing a potential arms relationship that would have involved the United States, Iran and Israel. Participating in these discussions with Ghorbanifar were Adolph Schwimmer, an Israeli arms dealer who had been an adviser to Prime Minister Peres since September 1984, Amiram Nir, Peres' Adviser on Counterterrorism, and Yaacov Nimrodi, another arms dealer who had been an Israeli defense attache and then an unofficial "consultant" in Tehran for a total of 24 years.[36] At least one of these meetings included Roy Furmark, a business associate of Khashoggi's and an acquaintance of Casey's.[37] Israel and the United States were major arms suppliers to the Shah's Iran during the 1970s, and a classified State Department document says Israel had sold some arms to the Khomeini regime in 1981 and 1982.* The arms dealers in the 1985 group had an obvious stake in resuming such sales.

At roughly the same time, beginning in early 1984, the NSC staff was beginning to rethink the U.S. posture toward Iran. The net effect of the 1984 efforts was to conclude that the United States neither knew enough about, nor was in a position to have much influence over, future developments in that country. "Early in 1985," the Tower board wrote, "the NSC staff undertook actions aimed at least to improve the government's knowledge about Iran".[38]

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* According to a November 1986 classified State Department document, in 1981 and 1982, prior to the initiation of Operation Staunch, the Government of Israel asked the United States to approve shipment of certain military items under U.S. control to Iran. Israeli representatives made many of the same points that were made in the 1985 arms sale proposals, including that such transfers would improve access and influence with "moderate elements" and could lead to progress in securing the release of U.S. hostages. The United States stated that certain types of U.S. controlled items could be shipped if specific U.S. Government approval were obtained, but no shipment of such items was ever approved. In May 1982, Israeli officials acknowledged publicly that Israel had sold substantial quantities of U.S. origin military supplies to Iran. U.S. Department of State, Memorandum from Richard W. Murphy to Secretary of State Shultz, "U.S.-Israel Discussions on Arms Sales to Iran—1980-82," November 21, 1986, S3547. See also Secord Test., *Hearings*, 100-1, 5/8/87, at 273-74.

One person who got involved with that job was NSC consultant Michael Ledeen. When Ledeen was in Europe in March or April of 1985, an official of a West European country told Ledeen that the situation in Iran was more fluid than it had been in the past. If Ledeen wanted to know more about Iran, the official said that Israel had the best intelligence there of any country in the Western world.[39] Ledeen visited Israel in early May where he met alone for about 45 minutes with Prime Minister Peres to express the U.S. interest in learning more about Iran. The hostages were not part of this discussion, Ledeen said. According to Ledeen, Peres said that Israeli information was not all that outstanding, but Peres urged Ledeen to meet with Shlomo Gazit, President of Ben Gurion University and a former director of military intelligence. In that subsequent meeting, Ledeen was asked to carry a request back to McFarlane asking for permission for Israel to sell some artillery to Iran.[40]

During May and June, the NSC staff continued to work on a draft National Security Decision Directive (NSDD). At the end of its analysis of the United States' long and short term goals in Iran, a June 11 draft NSDD recommended "provision of selected military equipment as determined on a case-by-case basis". McFarlane circulated the NSDD draft to Shultz, Weinberger and Casey. Shultz responded on June 29 by saying he disagreed "with the suggestion that our efforts to reduce arms flows to Iran should be ended." Weinberger's July 16 answer was sharper. "This is almost too absurd to comment on," he wrote. "This is roughly like inviting Qadhafi over for a cozy lunch." Only Casey endorsed the "thrust of the draft," but his July 18 response said nothing about arms sales.[41] The draft NSDD was never brought to the President's attention and was not adopted.

The two separate strands came together in the weeks after the draft NSDD was circulated and before all the answers were in. On July 3, McFarlane met with David Kimche, Director General of the Israeli Foreign Ministry. According to McFarlane, Kimche wanted to know "the position of our government toward engaging in a political discourse with Iranian officials," and thought the Iranians would ultimately need something, namely arms, to show for the meetings.[42]

About July 11, Schwimmer came to see Ledeen. Ledeen testified that Schwimmer claimed he and his colleagues:

> had been introduced a short time before by Adnan Khashoggi to a very interesting Iranian by the name of Ghorbanifar, and that Ghorbanifar had a lot of very interesting things to say both about Iran and about the intentions of the leading figures in the Government of Iran.[43]

We do not intend to produce a full recitation of events here, but it is worth pausing at Schwimmer's reported statement that he had just been introduced to Ghorbanifar. The clear implication of the statement, as it was understood by Ledeen, was that Ghorbanifar was a new source of information for the Israelis, even though Ghorbanifar had been meeting with them since January. There is a dispute over Ghorbanifar's exact relationship with Israel, but no one seems to think the relationship was new. North, Poindexter, George and Hakim have said they thought Ghorbanifar was an Israeli agent or asset.[44] Hakim specifically said he thought someone working for Nimrodi had recruited Ghorbanifar years before in Tehran.[45] Shackley, however, described him as "an independent man" with SAVAK connections (Hakim had also mentioned SAVAK.) The view of Ghorbanifar as being essentially independent would be consistent with his having had a past relationship with Israel, but with different connotations on the extent to which Israel could have controlled Ghorbanifar. The interpretation that stresses Ghorbanifar's independence gains some support from the sheer number and variety of methods Ghorbanifar tried to use to approach the United States Either way, however, Ghorbanifar and Nimrodi knew each other during Nimrodi's quarter century of service in Tehran. Schwimmer's alleged representation to Ledeen that he was a new source therefore seems disingenuous, to say the least.

So, Israel was more than a passive message bearer at the outset of the initiative. In addition, it weighed in to help keep the initiative on track at several points later. These included, among other things, an August 2, 1985 visit Kimche paid to McFarlane to seek authorization for the first Israeli TOW transfer;[46] Nir's January 1986 proposal to keep the initiative moving forward at a time when U.S. interest appeared to be flagging,[47] and Peres' February 1986 letter to [48] and September 1986 communication with President Reagan.[49]

Shultz v. Shultz—Suckers or Big Boys?

The question that arises out of all this is whether Israel was playing on U.S. ignorance to draw the United States into the Iran arms transactions. At a November 10, 1986 meeting between the President and his top advisors, Secretary Shultz said, according to Donald Regan's notes, that he "Thinks Israeli [sic] suckered us into this so we can't complain of their sales." [50] Shultz apparently expanded on this point in a private meeting he held with the President ten days later. A briefing paper Shultz brought with him to that meeting stated:

> Much if not all of the incentive on the Israeli side of the project may well have been an Israeli "sting" operation. The Israelis used a number of justifications to draw us into this operation—in-

> telligence gains, release of hostages, high strategic goals, . . . Israel obviously sees it in its national interest to cultivate ties with Iran, including arms shipments. Any American identification with that effort serves Israeli ends, even if American objectives and policies are compromised.[51]

We are inclined to agree with Shultz that Israel was actively promoting the initiative because the initiative suited Israel's own national interest. We disagree, however, with the idea that the United States was being played for a sucker. We believe the U.S. Government responsibly made its own judgments, and its own mistakes.

To show the extent to which U.S. eyes were open, it is worth reviewing a few more items in the Committees' records. In McFarlane's July 13 cable to Schultz about his own meeting with Kimche and Ledeen's meeting with Schwimmer, McFarlane seemed to be more aware than Ledeen that the relationships being described were not new ones. McFarlane said that in the course of his conversation with Kimche it "became clear that [their access to Iranian officials] has involved extensive dialogue for some time." His cable also mentioned Ghorbanifar.[52] On the same day, Assistant Secretary Richard Armacost sent a cable to Shultz saying that the U.S. Government considers Ghorbanifar to be "a talented fabricator." [53] Shultz told the Tower Commission he read this cable on July 16.[54] From early in the initiative, in other words, the U.S. Government had good reason to be wary of Ghorbanifar.

Why, then, did the NSC want to pursue this channel at all? North's answer is persuasive.

> I knew, and so did the rest of us who were dealing with him, exactly what Mr. Ghorbanifar was. I knew him to be a liar. I knew him to be a cheat, and I knew him to be a man making enormous sums of money. He was widely suspected to be, within the people I dealt with at the Central Intelligence Agency, an agent of the Israeli Government, or at least one of, if not more, of their security services.
>
> That is important in understanding why we continued to deal with him. We knew what the man was, but it was difficult to get other people involved in these kinds of activities. I mean, one can't go to Mother Theresa and ask her to go to Tehran . . . . I know there is a lot of folks who think we shouldn't have dealt with this guy, but at the bottom we got two Americans out that way and we started down a track I think we could have succeeded on. As bad as he was, he at least got it started there.[55]

The United States also went into the initiative knowing full well that there was far from an identity of interests between the U.S. and Israel. McFarlane mentioned in his cable to Shultz at the start of the initiative, that the risks of failure would be different for the United States than for Israel: "Surely we ought to expect that Israel's fear over any Arab (as opposed to Iranian) fallout would not necessarily coincide with our own." [56] Shultz's cable of the next day also mentioned that "Israel's interests and ours are not necessarily the same".[57]

As for the character of the difference between U.S. and Israeli interests toward Iran, several witnesses testified that the United States would like to see a quick end to the Iran-Iraq war, but Israel, at a minimum, might find its interests served by prolonged fighting between the two countries.[58] This key difference was said by McFarlane to have been openly discussed in his July 3, 1985 meeting with Kimche:

> [Kimche] said, "Obviously Israel's interests are very different from your own," and pointed out that they have an interest in sustaining the conflict. We don't.
>
> I stressed all of our policy points . . . . They are different in many respects from Israel's. But that was clear on both sides, going in, eyes open. The President was very conscious of that.[59]

Another major point of difference was that Israel, like most West European and many other countries, reportedly was selling arms to Iran. The United States was trying to stop the flow of such arms. For that reason, the specific method for trying to establish a relationship, involving arms and hostages, was a particularly risky one for U.S. policy interests. Once again, however, this point was thoroughly argued within the Administration.

The point of all this is that Israel had good reasons for wanting the United States to get involved, but the U.S. had its own reasons for listening. The United States decided the initiative was worth pursuing, for all of the reasons we have already noted. To be sure, the U.S. did make important errors of judgment. It was overeager. On occasion, it did listen too uncritically to Israeli advice. But the warning flags were there, and McFarlane at least paid lip service to noting their presence. Any U.S. mistakes, therefore, can be laid only at our own country's feet. As Secretary Shultz said before our Committees, "We are big boys and we have to take responsibility for whatever it is we do. We can't say that well, somebody else suggested it to us, therefore it is their fault." [60]

Hostages and the Iran Initiative

We are convinced, as we have argued, that the Iran initiative started as a desire to pursue a strategic opportunity, and that these considerations always remained important. At the same time, there can be no question—as the President himself acknowledged—

that the President's personal concern for the hostages added a sense of urgency that skewed our negotiating tactics, and helps explain the imprudently wishful thinking that led Poindexter and Casey to proceed despite repeated disappointments.

It is important to note that the President has an affirmative duty under U.S. law to do everything in his power to secure the release of Americans illegally imprisoned or held hostage abroad. Under the 1868 Hostage Act, invoked by President Carter during the Iranian hostage crisis of 1979-81:

> Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of the government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.[61]

Under the Hostage Act, the President has a positive, legal obligation to take whatever steps may be necessary and proper, short of war, to secure the release of American citizens. Even without the act, however, we observed in our chapters on the Constitution that the President has a duty to protect the lives and liberty of Americans abroad.

Unfortunately, the duty to protect lives does not always give clear guidance about what to do in specific cases. Taking the wrong steps to save an individual hostage can make hostage taking seem profitable to terrorists. The methods used to save one hostage, in other words, may threaten countless other Americans traveling or living abroad. We have to acknowledge, however, that it is easier to put advice on a piece of paper than to implement the advice in the face of a constant barrage of public criticism, and direct pressure from the hostages' families.

As hard as it may be to let any American remain hostage, one was a special case: William Buckley, the Beirut Station Chief. Buckley was rebuilding the CIA's Lebanon station after the disastrous embassy car bombing of 1983. When he was taken hostage, he knew a great deal about U.S. sources and methods in the Middle East and U.S. officials strongly suspected that he was being tortured to force him to divulge those secrets.

> Mr. CHENEY. I would assume partly on the basis that he was literally one of our own, a man in service to the nation, that there were special feelings on the part of Director Casey for Mr. Buckley as well?
>
> Mr. NORTH. It was my understanding that there was not only a professional relationship between Mr. Buckley and Director Casey but a personal one, and that Director Casey felt very strongly about William Buckley. To the very end, Director Casey was anxious to get the body of Bill Buckley home, and certainly the tortured confession.
>
> Mr. CHENEY. Would it be fair to say that the situation of the hostages, and especially Mr. Buckley, had an impact at least upon the policy decisions we have been talking about here in connection with the opening to Iran, the decision to ship weapons to the Ayatollah?
>
> Mr. NORTH. I believe it did . . . . One of the most difficult things that I experienced in this rather lengthy ordeal, and I am sure it was the same for Mr. McFarlane and Admiral Poindexter and the President, was to see the pictures that we were able to obtain, the videotapes particularly, of Bill Buckley as he died over time, to see him slowly but surely being wasted away.[62]

This testimony from North certainly makes it easier to understand how concern for the hostages could come to have played too prominent a role in the Iran initiative.

DEA Activities

We shall digress briefly from the Iran initiative at this point to discuss another effort the Administration undertook to gain the release of the hostages in Lebanon. This one involved Drug Enforcement Administration (DEA) agents and began in early 1985. The majority is highly critical of this effort in its report. This is puzzling to us, because if the DEA operation had succeeded, there would have been no temptation to mix concern for the hostages with the strategically more important talks with Iran.

The majority repeatedly describes the DEA activities, which were under North's direction, as an overt attempt to pay ransom for the hostages. Indeed, a number of the points made by the majority depend on the ransom theme. The importance of this claim, to the overall thesis of the majority report is that, if true, it would show a predisposition toward paying ransom that would tend to confirm an interpretation of the Iran initiative as an arms-for-hostages deal. We too would be troubled if ransom were being contemplated. But, according to the evidence received in the Committees' investigation, the DEA rescue plans contemplated bribes as the means to gain the hostages' release. There was no attempt to pay ransom to the captors.

The majority discounts the testimony of one of the two DEA agents involved, whom we shall call Agent 1. The agent clearly stated that the plan was to offers bribes to certain individuals, and not to pay ransom to those who had directed the capture of the hostages. The agent emphasized that none of the captors had solicited ransom. Rather, money was to be delivered as bribes to those who could effect the release of the hostages, not to the people who actually controlled the terrorist organization. The idea was to find individuals who could be paid off without the knowledge of those in control. The money was intended to go directly to these individuals.[63]

The majority also ignores the account of the Defense Intelligence Agency (DIA) Major who served on the Hostage Locating Task Force in 1985 and 1986. In January 1986, the DIA Major met with the other DEA agent involved in hostage activities, whom we shall call Agent 2, and with two sources who were assisting the DEA agents. The DIA Major observed that one of the two sources was more promising because of his contacts and superior access to the hostage takers.[64] The DIA Major prepared a memorandum of these meetings, and he testified to its accuracy.[65] According to the memorandum, the more promising of the two sources suggested bribery to free the hostages.[66]

Furthermore, Agent 2 testified that when one source suggested that the Lebanese hostage takers would release the hostages in exchange for weapons, the agent dismissed the suggestion. Asked whether the subject of weapons was ever raised again, the agent replied: "No, because I think we had told the source that forget it, you know. It has got to be a bribe situation, not a ransom, but a bribe situation".[67] In fact, the questions from the majority's own counsel clearly recognized that the plan involved bribery.*

A prime example of the majority's attempt to characterize the DEA plans as ransom plans is their analysis of activities in May and June of 1985. The majority alleges that the plan in that time-frame was to pay ransom money of $1 million per hostage. On the contrary, three memorandums on the issue, written by Col. North, all clearly described a plan to bribe individuals other than the hostage takers. The bribe money was to be paid to individuals with access and to those who would arrange transportation and safe passage for the hostages. None of these memorandums mentioned any ransom payments to the hostage takers.[68] North's superior, Robert McFarlane, similarly described the plan as one of bribery.[69]

The majority also claims that the DEA activities were inconsistent with the simultaneous effort to gain the release of the hostages through the Iran initiative. Such a claim is based on the majority's view that at the same time North was arranging to sell weapons to the Iranians to induce them to influence the Hizballah captors to release the hostages, North was offering direct ransom payments to the captors. As shown above, the majority's ransom notion conflicts with the facts. Also, the majority's theme of inconsistent channels for release of the hostages ignores the fact that the DEA activities, which commenced in early 1985, were in existence months before the first sale of arms to Iran in August and September 1985. In any event, the fact is that, notwithstanding the DEA plans as well as other plans for hostage release, the Iran initiative did lead to the release of three hostages. Any alleged conflict or inconsistency is based on speculation. Given the majority's inclination to criticize every perceived or misperceived activity of the Administration in its effort to free the American hostages, the case can be made that if North had not pursued alternatives to the Iranian arms sales, the majority would have found fault with such failure to find better ways to free the hostages.

The last important majority contention is that the activities of the DEA agents were "operational" rather than intelligence-related, and that such activities therefore required that Congress be notified. The facts show that the DEA agents gathered intelligence, planned several operations to free the hostages, and took some preparatory steps for these operations. However, the actual operations to free the hostages did not take place, to a large extent because of events in the Middle East beyond the control of the agents. The participants should, however, have paid closer attention to accounting, funding, and reporting requirements, in order to ensure full compliance with the applicable rules and regulations.

In the final analysis, the DEA efforts to free the hostages must be viewed in perspective. The President was personally committed to do all that he could to bring the hostages home, and there was intense national pressure to do so. Accordingly, the Administration initiated several alternative programs, including the plan to use DEA assets in Lebanon. DEA efforts ultimately failed, and in hindsight these efforts could have been better implemented. Nonetheless, the facts show that many involved in these activities acted at great personal risk and with the best of intentions. Moreover, the Administration deserves recognition for its efforts to explore every promising avenue for the release of the hostages.

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* The counsel stated during the deposition: "You were trying to bribe these people with money at the same time they were trying to get weapons from North" See Agent 2 Dep., 8/28/87, at 61. Later, the same counsel asked: "How were these people to be released? In other words, was it to be a forcible extraction. Was it to be a bribing . . . to look the other way?" The agent responded: "Bribing. It was always bribing. May not even be bribing. It may be they go shoot all the guards." See Agent 2 Dep., 8/28/87, at 109.

The Second Channel

It is tempting, knowing Buckley's fate and the depth of the President's feeling, to portray U.S. policy as having become "hostage to the hostages." The hostages did become too prominent. Negotiations conducted through the First Channel, arranged by Ghorbanifar, never got off the arms-for-hostages track, despite repeated U.S. efforts. Once discussions began through the Second Channel, however, they began to take in broader geopolitical issues. Some aspects might potentially have been promising. Others, such as the Da'wa prisoners, should have been turned off from the beginning.

The "First Channel" talks between Iran and the United States, from late 1985 through the May 1986 Tehran trip, were arranged and principally conducted by representatives of the Iranian prime minister, who has ties to the more radical elements of the government. Representatives of the so-called "middle of the road" Rafsanjani faction also appear to have attended some of these meetings. Rafsanjani, generally regarded as the number two official in Iran,[70] is the Speaker of the Majlis or Parliament and has principal responsibility for foreign affairs and the conduct of the war. These early meetings used an unreliable intermediary, Ghorbanifar, who misled both sides and who thereby frustrated the progress of the discussions.

The discussions during the Fall of 1986, on the other hand, generally referred to as the "Second Channel" meetings, were sought, arranged and conducted by representatives of Speaker Rafsanjani. Rafsanjani proposed that representatives of the other factions be included in the joint commission that was to be established to pursue the normalization of relations.[71] These changes in the leadership of the negotiations appear to have corresponded with an increasingly serious willingness on the part of the Iranian leadership to consider renewed strategic cooperation with the United States, although the leadership did not abandon its interest in acquiring arms in return for hostages.

The Ayatollah Montazeri, a prominent religious leader who is virulently anti-American and a supporter of radical fundamentalist violence in Saudi Arabia and elsewhere, was excluded from both sets of discussions. It was later determined that Ghorbanifar had leaked information concerning the First Channel meetings, including the secret participation of Israeli representatives, to the Montazeri faction. This faction was responsible for disclosing the U.S.-Iran negotiations in the Fall of 1986 in retaliation for the arrest of several of its leaders. After the disclosure, factional warfare within Iran and the U.S. public's response effectively ended the discussions. Since then, they have been overtaken by events in the Gulf.

Negotiations

The initial meetings with the second channel took place secretly in Washington, D.C. over two days in September, 1986. Detailed contemporaneous notes have been made available to the Committees. They show that Colonel North, accompanied by George Cave, a CIA expert on Iran, engaged in two-way discussions of the elements of a new relationship in a way that had not apparently been of interest to the previous channel. The discussions moved from broad, strategic objectives to a number of sensitive and highly specific points. According to the notes, these included the following:

—U.S. and Soviet interests in Iran;
—U.S. and Iranian interests in Afghanistan;
—Iran's objectives in the Iran-Iraq war;
—Soviet objectives in the Iran-Iraq war;
—Intelligence information about deceased hostage William Buckley; and
—Establishing secure communications between the two governments to avoid compromise by hostile third governments.

The negotiators also raised the possibility of an expanded military supply relationship, but the U.S. participants made it clear that such a relationship presupposed resolution of the hostage situation, which was also discussed extensively.[72]

The next significant meetings were held in October 1986 in Frankfurt, West Germany. The U.S. participants were North, Cave, Secord and Hakim. The Iranians made it clear that they wanted the relationship to go beyond a "merchant" or "trading" relationship.[73] The U.S. and Iranian representatives discussed common geopolitical interests extensively, and compared available information. The discussion then turned to the extent to which the United States was willing to supply additional weapons to Iran. U.S. negotiators made clear that the weapons Iran had requested could be supplied if the hostage issue was resolved first.[74] The U.S. and Iranian negotiators also discussed the Iran-Iraq war, the meaning of an honorable "victory" for Iran, the status of Iraq's Saddam Hussein.[75]

North then left the meeting after stating that his "Seven Point" proposal[76] was the full limit of his authority.* The Iranians made a counterproposal. Hakim and Secord were left with authority to try to come to an agreement with the Iranians, subject to approval by the U.S. Government. After some additional discussion, Hakim and Secord reached a new "Nine Point" agreement.[77] It provided in substance for the release of one hostage, with a promise to attempt to obtain another, in return for the shipment of some U.S. weapons, instead of insisting on all of the hostages as North's original proposal had done. It also included a plan that might result in direct Iranian-Kuwaiti negotiations over release of the infamous Da'wa prisoners.** The agreement was reviewed by North and Poindexter and Poindexter claims to have briefed the President.[78] The evidence indicates, however, that the President was not told about the Da'wa. When he learned about the Da'wa part of the talks later, the President found it repugnant.[79] So do we.

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* He had to leave suddenly because he had learned that the airplane carrying Eugene Hasenfus had been shot down over Nicaragua. See North Test., Hearings, 100-7, Vol. II, at 6.

It is hard to reach a definitive judgment about the Second Channel meetings. Consider this exchange between Representative Hyde and Admiral Poindexter from the public hearings:

> Mr. Hyde: The conventional wisdom is that the Iran overture was a policy disaster. Is that not too precipitous a judgment? Shouldn't the jury still be out on that? Because if we do lack good intelligence, we don't really know whether we were getting somewhere or not on the hostage issue or the strategic opening. Is that a fair statement?
>
> Mr. Poindexter: I think that is a very fair statement. I think it is possible if the present people working this problem in government go about it properly, I think it is still possible. One of the interesting things is that we maintained contact with the second channel right up until the day I left the White House and we were alerting the channel as to what we were getting ready to do so that the President's speech, so that his press conference didn't surprise them.
>
> We got the Iranian Government to have their ambassador at the U.N. make a statement which referred to the United States in terms that are more favorable than ever had been made public by this particular Iranian Government, because I truly believe that with the second channel that we had established, we were in contact with some people that really wanted to bring about some changes in the Iranian Government that would be much to the benefit of the United States.
>
> I am not talking about returning to a situation in Iran that was the same as when the Shah was there, but turning the government around to a direction where we could indeed have a constructive relationship with them.
>
> I think it is still possible that that may come about.[80]

In some respects, the actual results of the Second Channel negotiations—a small shipment of arms, the release of one hostage—were similar to the earlier agreements conducted through the First Channel. Two elements of the Second Channel meetings were different, however. First, although some of the same people participated in meetings held through both of the channels, the Second Channel meetings involved a different, more powerful leadership. Second, the Iranians this time clearly seemed to recognize that if the hostage problem could be finally resolved, the United States and Iran had important, mutually compatible interests that might well sustain a substantially increased level of cooperation.

The precise elements of the strategic relationship being discussed were decidedly mixed, however. Some were beneficial to the United States, such as the exchanges of information over mutual geopolitical interests in the region. Others, such as proposed Da'wa release, were not. North may have been correct in saying that the position he endorsed on the Da'wa did not exactly contradict publicly stated U.S. policy.[81] This technical accuracy does not begin to account, though, for the way such a position would have undermined U.S. credibility. It is another example of the NSC staff thinking about literal compliance, without adequately considering the long term political consequences.

Conclusion: The Role of the NSC Staff, and Others

The Tower Commission concluded that the Iran initiative was pursued with a flawed decision process managed by the NSC staff, and suggested that the procedural flaws were responsible for some of the initiative's substantive errors.[82] The Tower board, we believe, underestimated the extent to which major issues were aired and argued before the President from November 1985 through January 1986. But the board was right to say that the lack of regular procedures, fostered by an excessive concern for secrecy, short-circuited the process of periodic review and evaluation—both of the substantive desirability of continuing the initiative, and of the decision not to notify Congress.

To describe what happened simply in terms of the process, however, leaves some important questions unanswered. It is true that good organization can help make sound decisions more likely. But organization, at best, is a tool. The real flaw in the NSC's Iran negotiations, as well as in the NSC's deceptions of Congress over Nicaragua, came from errors in judgment. The question, therefore, is: what can an administration do to ensure that people with the appropriate

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**At the meeting in Frankfurt, North specifically told the Iranian representatives not what the United States would be willing to do to release the prisoners, but what the Iranians would have to do before the Kuwaitis would release them. See C378. North did not promise then or later to take any affirmative steps on behalf of the United States to seek the release of the Da'wa prisoners. George Cave testified to this effect as well. See Cave Dep., 9/29/87, at 152-53. See also *Id.* at 56.

breadth and depth of judgment are fully involved in the process at the appropriate stages? The majority report seems to want to get at this issue by legislating organization for the executive branch down to the finest detail. We are convinced, however that no one formula will work best for all Presidents.

It is important not to let the record be closed with a naked criticism of the NSC staff, such as the one with which we closed our review of the Second Channel negotiations. The NSC's weakness, and the way the Iran initiative and Contra support programs gravitated toward the NSC, point to issues that go beyond this particular NSC and the specifics of this investigation. The NSC staff operated within a context that was also a part of the problem.

Presidents can use their NSC staffs in a variety of different, and equally valid, ways. One President might prefer a staff that filters and summarizes. Another might want a more active, more politically attuned and more powerful NSC staff. Like the Tower Commission, we do not think it is appropriate to tell Presidents how to arrange the people who work for them. The best organization is the one that works best for the elected official who bears final responsibility. But an administration's style, overall, has to be one that fits together in all of its parts. If the NSC staff is to operate primarily as an honest broker, that imposes responsibilities on cabinet officers chosen for their judgment. If the cabinet officers fail to meet those responsibilities, they end up leaving policy initiation, oversight, substantive review and political review to people who may not have those tasks as their primary strengths.

The Reagan Administration has been beleaguered from the beginning by serious policy disagreements between the Secretaries of State and Defense, among others. That in itself in not unusual. The perspectives of those two departments often produce disagreements, under many Presidents. One reason Presidents need an NSC staff is precisely to help the President benefit from the differences within his administration, and not suffer from them. We have learned in our hearings that President Reagan has been willing to act decisively to settle policy differences when they are presented to him. He has not been as successful, however, in ensuring that all such important differences are brought to his personal attention. In addition, he has not taken a strong hand in settling issues on which policies, personnel conflicts and turf battles merge. One result has been that some people in the Administration have had an interest in seeing the NSC staff play the role of honest broker, and not being an independent source of power. Their interest coincided with President Reagan's own preference for cabinet government, and for a less independently powerful NSC staff than those of his predecessors.

It is ironic that many have looked upon the Iran-Contra Affair as a sign of an excessively powerful NSC staff. In fact, the staff's role in the Iran and Nicaragua policies were the exceptions of the Reagan years rather than the rule. When Robert McFarlane resigned in December 1985, both Chief of Staff Donald Regan and Secretary Shultz were wary of a strong successor. Passing over some widely discussed, and independently powerful people, such as Jeane Kirkpatrick, the President chose McFarlane's deputy, Admiral Poindexter. Press accounts written at the time saw Poindexter's selection in precisely these terms, as a decision to have the National Security Adviser play the role of honest broker.[83] This image of the NSC lasted almost until the moment the Iran arms initiative became public.[84] Poindexter was seen as a technician, chosen to perform a technical job, not to exercise political judgment.

Poindexter is a talented man. In addition to his skills as a naval officer, he is highly intelligent, knowledgeable about international relations, and experienced with procedures in the Reagan White House. He was not the sort of man, however, who normally sought to initiate policy or engage in jurisdictional battles. On the other side of this same character trait, he had little feel for the "people" side of domestic or international political strategy. That would not be a problem, however, as long as he managed to stay in the role of honest broker.

Of all people, White House Chief of Staff Donald Regan surely should have known of Poindexter's strengths and weaknesses. He should not have tried to second-guess everything the National Security Adviser did, but his job in the White House did require him to take note of when issues were likely to cause the President political problems. Even if Regan were not an expert in the substance of the international issues, it was his job to stay on top of the political implications of the NSC staff's activities. That alone should have led him to see red warning flags, and to make a careful check, when North was asked to testify about support for the Nicaraguan democratic Resistance after press accounts and a formal Resolution of Inquiry. He should have had a similar reaction when the NSC never reviewed the decision not to notify Congress about the January 17 finding.

One way of looking at Poindexter's mistakes is to say that they were just waiting to happen. Once the NSC staff had to manage two operations that were bound to raise politically sensitive questions, Poindexter was not well equipped to handle them. It is not satisfactory, however, for people in the Administration simply to point the finger at him and walk away from all responsibility. For one thing, the President himself does have to bear personal responsibility for the people he picks for top office. But the problem here may not have been who was picked. Instead, it may be that a person chosen to do one kind of a job as National Security Adviser suddenly was thrust into a very different kind of a situation. The question, therefore, is: how did it happen that the NSC came to play so prominent a role in the Iran-Contra Affair?

There is no mystery why the NSC staff became so important for U.S. policy toward Nicaragua. North's powerful personality, and disputes within the Restricted Interagency Group before Abrams became Assistant Secretary of State, both contributed to North's growing power. But the fundamental reason for the NSC's prominence, beginning in 1984, was the Boland Amendment. Once that amendment was passed, the CIA and State Department were all but read out of the picture. The NSC staff was able to operate under the restriction, and it did.

The evolution of the NSC's role in the Iran initiative was more accidental. David Kimche brought Israel's proposal to McFarlane in August 1985, instead of to the State Department, because he knew McFarlane well, because the State Department had rejected similar overtures in the past, and because he knew the issue would have to be decided by the President. The NSC staff was asked for flight assistance, instead of State, in November 1985, for essentially the same reasons. In January 1986, Amiram Nir saw Poindexter and North partly because Nir and North were their respective governments' counterparts on counterterrorism and had worked closely together in that capacity, partly because the hostages made this a counterterrorism issue, partly because the initiative had already started in the NSC, and partly, or mostly, because Secretries Weinberger and Shultz were strongly opposed to the arms sales.

In addition, the CIA was more than happy not to be managing the operation itself. It was content, as former Deputy Director of Central Intelligence John McMahon has said, to play a support role.[85] Clair George, the Deputy Director for Operations, expressed even stronger feelings, as did his whole directorate, because Ghorbanifar was being used as the intermediary. After having issued a burn notice on Ghorbanifar once before, Casey asked George to reevaluate him. The agency reinterviewed Ghorbanifar in late December 1985 and gave him a second polygraph in January 1986.[86] George told North how poorly Ghorbanifar had done, and then told Casey: "'Bill, I am not going to run this guy any more,' which means in our language, 'I will not handle him; he is a bum.'"[87]

There were a number of reasons peculiar to the particular operation, in other words, that explain why the NSC staff ended up running the Iran initiative. It is important to remember, however, that this function was an aberration. But the NSC lacked not only a person at the top who was picked for policy judgment; it also lacked operational experience.* There were people with such experience in the line agencies, but their Secretaries were vehemently opposed to the initiative.

In the best of all textbook worlds, the department secretaries and other political appointees would acknowledge the President's decision and work hard to make sure the decision is implemented professionally. As George Shultz said in his testimony, however, issues never seem to be settled in Washington.[88] Concern was rampant throughout the government that trusting anyone to run a policy he or she opposed vigorously was an open invitation to having the policy undermined, through leaks or otherwise. The situation helps explain why the NSC staff, when running a dangerous operation during which hostages could easily be killed, decided to be secretive.

There can be no question that the NSC denied Secretaries Shultz and Weinberger some information they should have had. However, if one looks at the record presented in testimony, it is also clear both of the Secretaries had many indications of what was happening. Weinberger did not push as hard he might have done to insist on a policy review, but we do not accept the Tower Commission's conclusion that he simply distanced himself from what was going on. On the other hand, the Tower Commission's assessment of Shultz seems more accurate. He does seem to have distanced himself, and then complained loudly afterward about what had happened.

Let us begin with Weinberger. During our hearings, the Secretary of Defense described himself as having been "pretty horrified" at a November 10, 1986 White House meeting, when he heard Poindexter give what the Secretary described as Poindexter's first general exposition and report on the initiative.[89] In contemporaneous notes, Weinberger also said he was surprised to learn that the President had signed a finding for the initiative in January 1986.[90] It would be misleading to treat Weinberger, however, as if he were left in the dark. For example, even though Weinberger did not know the President had signed a finding on January 17, he did attend a meeting at which the finding was discussed the day before, and he did know the Defense Department was shipping weapons to the CIA for Iran in February. He also learned about McFarlane's trip to Tehran from reports even though he had not been told about it in advance by Poindexter, and he knew about the

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* However, the NSC played an operational role in a series of risky foreign activities during the Reagan Administration: the raid on Libya, the freeing of the American students on Grenada, and the capture of the Achille Lauro seajackers. Admiral Poindexter pointed out that nobody (Congress and press included) ever complained about the NSC's role in these successful operations. It was not until the problems with the Iran initiative and the Contra assistance program (both highly controversial foreign policy initiatives) that the NSC's operational role was questioned. Poindexter Test., Hearings, 100-8, 7/17/87, at 167-168. This raises a serious question as to whether the NSC should be legislatively prohibited from ever playing an operational role to assist the President with sensitive and risky activities that the State and Defense Departments bureaucraties might be too cumbersome to react to effectively.

October 1986 shipment.[91] When he did not see all of the hostages come out, he could have said it was time to see how the policy was working. In fact, Weinberger said that he did make the point "all through that year" to Admiral Poindexter.

> I talked to Mr. Poindexter so many times, and I don't remember whether the President was present at some of those meetings or not. I think he may well have been, but I am not sure of that. But the continued objection was made all through that year with repeated—my repeatedly calling attention to the fact that it wasn't working.[92]

Weinberger was repeatedly told by Poindexter, however, that the President had made up his mind and it was useless to keep rearguing the point.[93] Weinberger probably could have insisted on a review anyway. Poindexter's past record, however, led others, mistakenly on this one issue, to see him as a person who (a) carried cabinet level messages faithfully and (b) was not an inordinate risk-taker. We have to surmise from Weinberger's behavior, therefore, that he accepted Poindexter's characterization and concluded that the issue was not important enough to him to be worth repeated pushing. Other battles, over arms control for example, must have been of higher priority.

Shultz is more open to criticism than Weinberger, in our view. For one thing, the Iran initiative directly went against Operation Staunch and other State Department programs. He had more reason bureaucratically to insist on an active role, and more solid reasons than Weinberger to think the initiative might be running counter to the positions he and his department were charged with enforcing.

Secretary Shultz submitted a chronology to the Committees that listed an impressive number of occasions on which he was led by Poindexter to think that the United States was not contemplating or engaged in arms sales to Iran.[94] Nevertheless, there are also a significant number of occurrences that would have given a more engaged Secretary, or one who wanted to be more engaged, an opportunity to insist upon being fully informed.

For example, on December 5, 1985 Shultz was briefed by Poindexter on Iran. In that briefing, Shultz complained about the State Department being cut out of distribution on certain reports. Despite the complaint, the reports did not start coming to him.[95] From the very beginning of Poindexter's tenure as National Security Adviser, therefore, Shultz was given a strong signal that he would have to be very aggressive to stay on top of all of the relevant information he would need to know. Then, in January, Shultz all but told the secretive Poindexter that he would let him be the judge of what he thought Shultz should be told about Iran:

> What I did say to Admiral Poindexter was that I wanted to be informed of the things I needed to know to do my job as Secretary of State.
>
> But he didn't need to keep me posted on the details, the operational details of what he was doing. That is what I told him.
>
> Now, the reason for that was—I'm not—this is the gist of what I told him. I don't remember the exact words, but that was about it. The reason for that was that there had been a great amount of discussion of leaks in the Administration, justifiably so. . . . I felt it would probably leak, and then it wouldn't be my leak.[96]

Shultz insisted that he intended and expected to be informed about major issues. But he did leave it to Poindexter to decide which issues were which.

On January 7, 1986, the President held a meeting to discuss Amiram Nir's proposal to resume the arms sales with Iran. Shultz, Weinberger, Meese, Casey, Regan and Poindexter were there. Shultz and Weinberger opposed selling arms to Iran, as they had in past meetings. Unlike other meetings, Shultz said, "it seemed to me that as people around the room talked, that Secretary Weinberger and I were the only ones who were against it." [97]

Then, on January 16, Shultz attended a cabinet meeting at the White House. After the meeting, he was invited to come back later in the afternoon for a meeting about Iran. Shultz said he could not attend because he had another engagement. In our hearings, Shultz made a point of complaining that he did not know the meeting was to discuss what became the January 17 finding.[98] But he must have known, after the January 6 meeting, that arms sales and hostages were on the agenda. Weinberger, Meese, Casey, Sporkin and others attended the meeting, which was held in Poindexter's office. The finding was discussed extensively. Weinberger could have begged off on the same grounds as Shultz, by saying that the President was aware of his view. But the Defense Secretary attended and heard a thorough discussion of the finding. Shultz stayed away, did not send a stand-in, and never asked for, let alone insisted upon, a briefing on what had happened. After this sequence, one could certainly understand how Poindexter got the impression that Shultz did not really care to be informed. If this meeting did not give off every signal of a major, policy event, it is hard to know what would. And if Shultz chose not to come or to inquire afterwards, what should Poindexter have been expected to conclude about how much to tell the Secretary?

On February 28, Poindexter told Shultz that hostages would be released the following week and that Iranians wanted a higher level meeting, but even after the January meeting Shultz did attend, this news did not prompt Shultz to ask about arms. Shultz also approved the Terms of Reference for McFarlane's trip to Tehran on February 28. The trip was delayed repeatedly. Then, on May 3, Shultz received a cable while he was attending a summit meeting with the President in Tokyo. The cable said that the U.S. Ambassador to Great Britain had learned that a British businessman, Tiny Rowlands, had been approached by Nir to take part in an arms transaction with Iran that had White House approval and included Ghorbanifar and Khashoggi.

> Don Regan . . . told me that the President was upset and this was not anything he knew about, and Admiral Poindexter told me, I think his words were something like "We are not dealing with these people. This is not our deal."
>
> He told Ambassador Price, who called him, that there was, I think his words were, "only a smidgen of truth in it," something like that.[99]

It is puzzling to us how Shultz could have been reassured by what Poindexter told him in Tokyo. The phrases "this [as opposed to something else?] is not our deal" and "smidgen of truth" should invite skepticism.

What is the point of reviewing Shultz's record of disengagement? Shultz and Weinberger left the impression in our hearings, whenever they were asked about the subject, that the main reason to have asked for an NSC review of how the Iran policy was being implemented would have been to reargue the President's basic decision. But surely, that is not the only obligation a cabinet secretary owes to his President. Full NSC members have a responsibility to remain engaged to make sure (1) that the President's policies are being implemented correctly, with a proper eye for consequences not noted by an agency running an operation, and (2) to insist that the President periodically review important policy decisions, so all power is not left in the hands of the people most committed to pushing forward.

If a top official cannot honestly serve his President in this way, raising questions about implementation even when disagreeing with the underlying policy decision, then it is time to think about resigning. Presidents need the judgment and support, even if it is honestly skeptical support, of their top appointees. If the appointees find the policy so repugnant that they can only distance themselves from it, then they are not doing their best to serve. Weinberger did make sure that the Defense Department aspects of the operation were implemented properly. Shultz simply failed to find out about the aspects of the negotiations that directly affected his own department's responsibilities.

Everyone who had a stake in promoting a technician to be National Security Adviser should have realized that meant they had a responsibility to follow and highlight the political consequences of operational decisions for the President. Even if the cabinet officials cannot support the basic policy, they have an obligation to remain actually involved, if they could manage to do so without constantly rearguing or undermining the President's basic policy choice. That is an essential corollary of a system of cabinet government, with a relatively weak National Security Council staff. If the NSC staff is not expected to provide independent judgment, somebody else must do so.

It is at least theoretically possible that the idea of a strong cabinet government, with a weak NSC staff, will not meet any President's needs in today's international climate. That is, with the constant pressure of events and the inevitability of interdepartmental disagreement, it is possible that future Presidents will decide that some important issues over the course of a full term inevitably will require them to have something more than an honest broker as National Security Adviser. If the need is inevitable, Presidents would be well advised to choose people who are known for their independent skills at understanding the strategic politics of international relations, both domestically and abroad. President Reagan certainly reached this conclusion when he picked Frank Carlucci to replace Poindexter, and we expect that General Powell will also turn out to be a person with the requisite sense of judgment. But Presidents should not simply assume that the Iran-Contra affair automatically proves the inevitable need for an independently powerful NSC staff. President Reagan's approach toward governing automatically requires something from the cabinet that was not supplied in this case. The model, in other words, was never given much of a chance.

Endnotes

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11. McFarlane Test., *Hearings*, 100-2, 5/13/87, at 224; North Test., *Hearings*, 100-7, Vol. II, 7/13/87, at 62; Poindexter Test., *Hearings*, 100-8, 7/20/87, at 290; Tower at B-8-9, B-61, B-89-90, D-12-13.

12. McFarlane Test., *Hearings*, 100-2, 5/13/87, at 224; North Test., *Hearings*, 100-7, Vol. II, 7/13/87, at 62; Poindexter Test., *Hearings*, 100-8, 7/20/87, at 290; Tower at B-7, B-90.

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22. Poindexter Test., *Hearings*, 100-8, 7/17/87, at 215.

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25. Memorandum from Poindexter to the President, January 17, 1986, p. 1, Ex. JMP-28, *Hearings*, 100-8.

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Chapter 9
Iran: The Legal Issues

These Committees' hearings and the majority report have trivialized important disagreements over international policy, and the political relationships between the legislative and executive branches. In an attempt to gain partisan advantage, the majority has focused upon legal disputes, trying to portray the Committees' role as that of prosecutor. We have indicated several times that we have some policy disagreements with the Administration's actions of 1984-86. We disagree, for example, with the decision to sell arms to Iran and to withhold notification to Congress for as long as the President did in this case. We also think it was a political mistake for the President not to have confronted Congress over the Boland Amendment in 1984. In neither case, however, do we think the Administration made serious legal missteps. Our reasoning with respect to the Boland Amendment was laid out in an earlier chapter. Here, we examine the major legal points raised by the majority in criticism of the Iran initiative. We conclude that the Administration was in subtantial compliance with the law throughout the Iran initiative.

Introduction

The Iran arms sales involved two different kinds of transactions. The 1985 shipments involved sales, from Israel to Iran, of arms Israel had purchased from the United States. The President gave his verbal approval for these sales,* and the U.S. assured Israel that the weapons could be replenished from U.S. stocks. The August-September 1985 TOW missile sales took place without any direct U.S. participation. A shipment problem in November 1985 brought General Secord into the picture. Ultimately, the CIA also became involved in a minor, peripheral way, because (1) Secord used a CIA proprietary, at commercial rates, to ship the missiles and (2) because CIA personnel became involved in trying to help arrange transshipment through a European country. Because of the CIA's participation, the CIA's General Counsel, Stanley Sporkin, drafted a written Presidential Finding within days of the event that was signed by the President about December 5, 1985. This is the Finding Admiral Poindexter said he destroyed in November 1986.[1] A draft of the Finding has been entered into the Committees' record as an exhibit.[2] The 1986 shipments, in contrast, all involved the shipment of U.S. arms through a commercial cutout, the Secord-Hakim "Enterprise." All of these shipments were adequately described and fully covered by a written Presidential Finding signed January 17, 1986.

The basic law governing most sales of U.S. arms to other countries is the Arms Export Control Act (AECA).[3] Under the AECA, the President is required to notify Congress of covered arms sales, and Congress has an opportunity to pass a joint resolution prohibiting major sales, if it can get the President's signature or a two-thirds veto override vote. The AECA also requires special waivers if a sale is to be made to a country, such as Iran, that has been named by the Secretary of State as one that supports international terrorism.[4] Finally, the AECA requires any country that receives arms under the terms of the act, such as Israel, to notify the President of any proposed transfers to third parties or countries, and to limit such transfers to countries or organizations otherwise eligible to receive arms under the terms of the act. Under this provision, transfers from Israel to Iran would be governed by the same notification and waiver requirements as direct sales or transfers from the United States. Similar restrictions apply to the retransfer of arms given to another country under the Foreign Assistance Act (FAA) of 1961.[5] Under the AECA and the FAA, sales of munitions valued at less than $14 million are not subject to the formal reporting requirements outlined in 22 U.S.C. 2753 (d). Arms sales may also proceed covertly under the National Security Act,[6] with prices set under the terms of the Economy Act.[7] The National Security Act does contain rules requiring notification of Congress,[8] and the Hughes-Ryan Amendment to the Foreign Assistance Act of 1961 limits the use of appropriated funds to support CIA foreign operations, to ones for which the President finds the operation to be important to the national security.[9] The legal issues raised by the arms sales to Iran may therefore be summarized as follows:

(1) Did the arms sales of 1985, from Israel to Iran, violate the terms of the AECA or FAA?

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* For the dispute over this point, see Tower, B-19-23. These Committees have developed no important new evidence on the point.

(2) Did the 1985 Israeli sales to Iran violate the requirements for Presidential authorizations or Findings under the terms of the National Security Act and the Hughes-Ryan Amendment?

(3) Did the 1986 sales violate the National Security Act's requirements for notifying Congress?

Our answer to each of these questions is no. We conclude that the Administration was in substantial compliance with the law during each of the Iran transactions.

Export Controls and the 1985 Shipments

All of the arms transfers before January 17, 1986—that is, the transfers of August, September, and November 1985—were accomplished by Israel's shipment of weapons from its own supplies. These weapons were originally obtained from the United States and were sent to Iran with the understanding that the United States eventually would replenish Israeli stocks.

It is reasonable to assume that the weapons Israel shipped to Iran in 1985 were originally supplied under the AECA or FAA. These two statutes do permit the President or the Secretary of State to consent to retransfers, provided that certain conditions are satisfied. Under the Arms Export Control Act, these conditions are that the United States itself must be able to sell weapons to the third country directly; that the third country transferee must agree in writing not to retransfer without U.S. permission; and that Congress must be notified.[10] The Foreign Assistance Act contains provisions similar to the first two above, but no notification provision.[11] It should be noted that while the Letter of Offer and Acceptance[12] Israel signed in receiving arms in the first instance required it to receive written authorization from the U.S. for retransfer of weapons to a third party, neither the AECA nor the FAA require a written authorization. In these instances, Israel received oral authorization for the retransfers. Because each of these transactions involved less than $14 million, compliance with the formal reporting requirements of the AECA and FAA is not required.[13]

The retransfer restrictions of the AECA and FAA were intended to cover situations in which the transferring country, rather than the United States, is the sole source of the retransfer request. The laws seek to ensure that such retransfers foster the national security interests of the United States. But in the case of the Iran arms sales, the Israeli shipments were made with the agreement of American authorities, and Israel was promised and later was given substantially identical replacements. Clearly, the Iran arms sales were premised on U.S. views about America's own national security interests. In short, the substantive purposes of the AECA and FAA were met.

An Alternative Route

The National Security Act provides an alternative legal route to using the AECA or FAA. Like the AECA and FAA, the National Security Act presupposes some kind of Presidential determination. Specifically, the determination must be that an action—in this case a retransfer—would "affect" the national security.[14] If the CIA is involved, the so-called Hughes-Ryan Amendment requires a more emphatic Presidential determination. Instead of saying an activity must "affect" national security, Hughes-Ryan says it must be "important." More significantly, this determination must be made personally by the President, and reported in a "timely fashion" to Congress.

We believe that the terms under which the President may use the National Security Act in fact meet all of the underlying purposes of the AECA and FAA, and that is why Congress has been satisfied to let the one approach be a substitute or alternative route to the other.* The fact is that the 1985 Israeli transactions essentially—and legally—were equivalent to ones in which the United States sold the weapons directly to Iran.

The evidence indicates that Israel participated in the 1985 transactions in reliance on U.S. assurances, provided by the NSC staff with the President's approval, that the U.S. would not oppose the transactions, and that the U.S. would replenish the arms Israel sent to Iran. The same arms could have been supplied lawfully, however, directly from American stocks. Indeed, the transactions of 1986 did proceed directly, under the authority of the National Security Act and the Economy Act. Assistant Attorney General Cooper pointed out in his December 17 memorandum to the Attorney General:

> [I]t is apparent that the real nature of the 1985 transactions was a bilateral sale by the United States to Iran, with Israel serving solely as a conduit or facilitator in the execution of that sale.
>
> We see no reason to treat the legality of Israel's participation differently than we would treat the participation of any other party that served as a conduit in a lawful covert operation. Had the United States consigned weapons from American stocks to Israel for shipment to Iran, Israel's role would have been exactly equivalent to the role that common carriers and public warehouses play in overt transactions. Because, so far as we know, the weapons that Israel shipped to Iran in 1985 and received from the United States were completely fungible, a similar equivalence is presented here. Just as an *illegal* sale of arms to Iran

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* There are differences in the formal reporting requirements, to be sure. In some circumstances, we might imagine that such differences could be significant. In this particular retransfer, they were not.

would not be made legal by using Israel as a conduit, so too a *legal* transaction could not be made illegal by Israel being used in the same way.[15]

The Laws Governing Covert Action

We turn now to the laws governing covert operation, which were the ones under which the Administration was operating. In our earlier chapter on the Constitution, we argued that the President has the inherent authority to use special agents and to encourage or order covert activities. Once the President begins using appropriated funds, however—including salaried personnel—Congress can put strings on the use of such funds. Congress can, for example, tie the President's hands in knots by appropriating money for only one specified operation at a time. For any number of important national security reasons, we noted in the Constitution chapter, the Congress has recognized that the President needs a contingency reserve fund to meet changing conditions during the course of a fiscal year. Once Congress gives the President a contingency reserve, there are lines of inherent Presidential authority that Congress may not properly cross. Those lines come into play most importantly in the extremely rare circumstance when the President has legitimate reason to believe that reporting must be withheld. We shall discuss this issue below. For any circumstances outside the extreme, however, Congress has put a number of requirements on the President that seem to us to pass constitutional muster.

For most of the country's history, covert activities were conducted by giving the President a contingency fund, without any additional, explicit statutory authorization. The first law codifying this power was the National Security Act of 1947. That law established the National Security Council and gave it the power, among others, to perform "such other functions as the President may direct . . . ."[16] In the polite language of the post-World War II diplomatic world, in which covert activities were not acknowledged publicly by governments, everyone understood this term to give broad authority to the President to use the NSC as he saw fit. Another title of the same law, however, created the CIA as the government's main body for conducting such activities:

> It shall be the duty of the Agency, under the direction of the National Security Council . . . to perform, such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.[17]

Historically, this language has been understood to authorize a wide range of foreign covert activities, including arms transfers.

Covert Transactions

The position that covert arms sales could proceed without triggering the requirements of the AECA was expressed as the Administration's interpretation of the law in October 1981. In conjunction with one covert transaction that year, Davis R. Robinson, Legal Adviser to the Secretary of State, wrote:

> It seems clear that Congress has not regarded the FAA and the AECA as an exclusive body of law fully occupying the field with respect to U.S. arms transfers. There are several illustrations where Congress, having been made aware of transfers to foreign countries outside that body of specific authorities, has reacted by enacting limited restrictions or reporting requirements rather than by prohibiting such transfers altogether.[18]

Robinson noted that if Congress had thought the AECA and FAA completely covered the field, it would not have passed the Clark Amendment of 1976, prohibiting covert aid to Angola, or the Hughes-Ryan Amendment establishing separate finding and notification requirements for CIA covert operations.

Three days after the Robinson memo was written, Attorney General William French Smith forwarded a copy to Director Casey. Smith wrote:

> We have been advised by the State Department's Legal Adviser that the Foreign Assistance Act and the Arms Export Control Act were not intended, and have not been applied, by Congress to be the exclusive means for sales of U.S. weapons to foreign countries and that the President may approve a transfer outside the context of those statutes.[19]

The Attorney General concurred with this opinion, and Congress was well aware of this fact.

Congressional awareness is shown most clearly in a provision of the Intelligence Authorization Act for Fiscal Year 1986. This provision, which became a new section to the National Security Act, reads as follows:

> Sec. 503. (a)(1)The transfer of a defense article or defense service exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of section 501 of this Act.
>
> (2) Paragraph (1) does not apply if--
>
> (A) The transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in con-

> junction with an intelligence or intelligence-related activity); or
>
> (B) the transfer--(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, [or] the Arms Export Control Act . . . .[20]

This act makes it clear, beyond any doubt, that Congress intended some covert arms transfers to occur outside normal AECA channels. It was precisely for this reason that it put in a threshold to trigger the reporting requirements under the provisions governing reporting and Congressional oversight of intelligence.

The General Accounting Office agreed with this conclusion. In a March 1987 report on the direct U.S. arms sales to Iran, the GAO said:

> Since Congress has explicitly recognized that intelligence activities may include the secret transfer of arms (Intelligence Authorization Act for fiscal year 1986, section 403 [quoted above as section 503 of the National Security Act]), the CIA is authorized by the Economy Act to turn to other agencies for that equipment. Therefore, we believe that the decision to use the Economy Act to provide support for this covert transaction was proper.
>
> Transfers of equipment by the CIA and others, including foreign governments, are governed by applicable laws relating to intelligence and special activities, rather than the Arms Export Control Act, which ordinarily governs overt arms transfers overseas. Consequently, we consider those transfers to be subject to the requirements pertaining to the conduct of intelligence and special activities. As a general rule, those transfers would not be subject to the pricing or reporting restrictions applicable to overt arms transfers conducted under the Arms Export Control Act.[21]

Hughes-Ryan Amendment

The direct statutory regulation of special activities began only recently, in 1974. In that year, Congress passed the Hughes-Ryan Amendment to the Foreign Assistance Act of 1961. As amended by the Intelligence Oversight Act of 1980, Hughes-Ryan reads as follows:

> No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States. [The following was added in 1980 to replace earlier "timely notification" language.] Each such operation shall be considered a significant anticipated intelligence activity for the purpose of section 501 of the National Security Act of 1947. [Section 501 is the 1980 Oversight Act.] [22]

As pathbreaking as Hughes-Ryan was at the time, its omissions are at least as important as its coverage for analyzing the Iran arms sales. Hughes-Ryan applies only to those covert operations involving the expenditure of appropriated funds by or on behalf of the CIA.

August-September 1985 Transactions

Specifically, the omissions of Hughes-Ryan mean that the Israeli's TOW transfers to Iran in August and September 1985—which did not in any way involve the CIA—did not require a covert action Finding under the terms of the law.* In fact, no written Finding was made at that time. Nonetheless, there is evidence indicating that the August-September and November 1985 shipments were carried out pursuant to the oral authorization of the President. In fact, the Hughes-Ryan Amendment contains no requirement that this Finding be reduced to writing or that it be articulated in any particular form. The main purpose of the Presidential finding requirement is to ensure that the President himself decides, before each such operation, whether the national security justified its being carried out. An oral authorization therefore satisfies the Hughes-Ryan finding requirement.**

We do believe it would be better to reduce covert action Findings to written form, so as to memorialize the undertaking and to avoid any confusion in implementation and notification. Certainly, all of the 1985 arms shipments should have been preceded by a written Finding or Findings. Paying more attention to formalities could have eliminated a number of legal issues which have been raised. But this criticism of the White House's past administrative practices is not intended to suggest that the shipments themselves did not meet the legal requirements.

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* It should be noted that Executive Order No. 12333 on United States Intelligence Activities (Dec. 4, 1981, 46 Fed.Reg. 59941) extended the finding requirements of Hughes-Ryan to the "intelligence community." As we have already pointed out in the Boland Amendment chapter, however, this language, and the earlier language of the Oversight Act of 1980, were crafted deliberately to exclude the NSC, which was the only U.S. government agency involved in even tangentially in the August-September shipments.

** This is the position taken by Assistant Attorney General Cooper in, Cooper Memorandum, "Legal Authority . . . ", n. 15 *infra*, at 7-8. In the President's National Security Decision Directive (NSDD) 159, dated January 18, 1985, there is a provision stating that the appropriate procedure for Presidential approval of covert actions is a written Presidential Finding. (See Ex. BGS-15, *Hearings*, 100-5.) However, this procedure, having been instituted for the internal use of the President and his intelligence advisers, cannot be considered to be legally binding on the President. Writing about Executive Order 12333, which if anything must have greater binding authority than a classified NSDD, Cooper said: Activities authorized by the President cannot 'violate' an executive order in any legally meaningful sense, especially in a case where no private rights are involved, because his authorization creates a valid modification of, or exception to, the executive order. *Id.* at 14.

November 1985 Transaction

One difference between the summer and the November shipments in 1985 was that the CIA did play a role, albeit a minor one, in November. It should be emphasized that this shipment consisted of a mere 18 HAWK missiles, and the CIA did not pay for their transportation. CIA officials merely referred North and Secord to a CIA proprietary airline, and this airline transported these missiles in a single plane as a strictly commercial transaction with full payment by Secord's enterprise to the airline. No CIA funds financed the shipment. The CIA's only direct role in this shipment was to facilitate overflight clearances from foreign governments. Thus, the CIA provided logistical support for a secret initiative conducted by the NSC staff.

There has been an inordinate amount of attention paid to the CIA's role in the November 1985 shipments. The underlying theory seems to have been (a) that the CIA and others in the Administration knew the November 1985 shipment was illegal and (b) that attempts to "cover up" the 1985 "illegalities" explain the altered chronologies, shredding and other events of November 1986. We consider both the theory and the underlying premise to be unfounded. For one thing, we do not consider the November 1985 shipments to have had legal problems, except possibly ones of a technical, minor sort.

Allegations that the CIA covered up an illegal action have been fueled by the mysterious disappearance of a cable Duane (Dewey) Clarridge allegedly sent to Country 15 on November 22 and one allegedly sent back to him from the same country the next day. The officer sending the second cable has said it informed headquarters that he had learned from Gen. Secord that the flight would contain HAWK missiles.[23] There have been questions about what happened to these cables. Clarridge specifically denies ever having received the second one, and said that so do the Deputy Director for Operations and others in the DDO's office who would normally have received a copy.[24] Clair George, the DDO, confirmed this testimony.[25] Moreover, Clarridge said, he did not think the difference between HAWKs and oil-drilling parts was all that significant from the agency's point of view, since both were embargoed items.[26]

We do not believe that support of this sort rises to the level of a CIA covert action that would require a Finding under Hughes-Ryan. The action, at most, should be treated as being *de minimis*. In any event, there is evidence that the President orally approved this HAWK shipment from Israel to Iran, and a written Finding was made within days. Then-CIA General Counsel, and now U.S. District Judge, Stanley Sporkin, who had as much experience interpreting Hughes-Ryan as any other federal official, testified that when CIA Deputy Director John McMahon told him to draft a Finding to cover the CIA's involvement, Sporkin thought a Finding was not required by law in this instance, even though he agreed it was prudent.[27] According to John Poindexter, who in early December 1985 succeeded Robert McFarlane as Assistant to the President for National Security Affairs, the President signed the Finding, probably on December 5, 1985.[28] By its terms, the Finding ratified the prior actions that the U.S. government took to obtain the release of the American hostages.

The November-December 1985 Finding reflected in written form that the President had been briefed before the shipments on the efforts made to obtain the release of the hostages, and that the President himself had found that these efforts were important to the national security of the United States. Therefore, in both the oral Findings referred to earlier, and the written Finding itself, the President accordingly ratified all prior actions and directed further actions to be taken.

As for the 1986 arms transfers, the President's written Finding of January 17, 1986 clearly and obviously satisfied Hughes-Ryan for all of them. These Findings covered both the U.S. sales to Iran, and the portion of the May 1986 transaction that replenished Israeli stocks for the 1985 transfers.

Timely Notification

Our closing pages on the Constitution contained an extensive analysis of why Presidents have the inherent power, under exceptional circumstances, to defer notifying Congress of a covert operation. Congress wisely recognized this fact when it passed the Intelligence Oversight Act of 1980.

The Oversight Act was an outgrowth of the the proposed intelligence charters of the 1970s, which we outlined in our chapter on the Boland Amendments. In this chapter, we shall concentrate on one aspect of that law, the requirement for Administration reports to Congress about intelligence activities. That law appears in the statute books as a new section 501 of the National Security Act.[29] Under section 501(a), the Director of Central Intelligence or the heads of other agencies or entities involved in intelligence activities,* are required to keep the intelligence committees of Congress "fully and currently informed of all intelligence activities," including "any significant anticipated intelligence activity." However, section 501(a) further provides:

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* We showed in the Boland Amendment chapter that the language in the Oversight Act deliberately excluded the NSC from these requirements.

> [I]f the President determines that it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate.

This is the provision that permits an Administration to limit advance notification to a so-called "Gang of Eight." The law also specifically contemplates a situation, however, in which notifying the Gang of Eight might be too risky. Consider this wording from section 501(b):

> The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, *for which prior notice was not given under subsection (a)* and shall provide a statement of the reasons for not giving prior notice. [Emphasis added.]

While we agree with the majority that the idea of "timely" notification almost always envisioned a short time period, the rare conditions under which prior notification has been withheld could not possibly have been defined in calendar or other precise statutory terms. As a result, the decision not to notify must of necessity rest on Presidential discretion.

The constitutional basis for withholding notification was recognized in, but, of course, does not depend upon, the "preambular" language of section 501:

> To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods . . . [the intelligence committees are to be kept informed of various intelligence activities].

Thus, section 501 acknowledges that reporting requirements cannot limit the constitutional authority of either the executive branch or the legislative branch, and further recognizes the need to protect sensitive information from disclosure.

The legislative history of the Oversight Act firmly supports our interpretation of its language. Consider the following explanation of the pending conference report on the Oversight Act by Rep. Boland, then the Intelligence Committee chairman:

> When prior notice is not given to the committees *or to the smaller group of eight,* the conference report makes clear that the full Intelligence Committees must receive reports on the covert operation "in a timely fashion."[30]

Clement J. Zablocki, then Chairman of the House Foreign Affairs Committee as well as a member of the Intelligence Committee, pointed out:

> In addition, the legislation makes the fundamental recognition that in extraordinary circumstances advance information on covert operations might be withheld from the Select Committees on Intelligence, provided the President informs the committees in a timely fashion and provides a statement of the reasons for not giving prior notice.
>
> Mr. Speaker, this recognition of the need for limited exceptions to prior reporting of covert operations is fully consistent with the Committee on Foreign Affairs amendment to Hughes-Ryan. I therefore welcome its inclusion in the conference report. Such exceptions are absolutely essential to a strong intelligence community and important for U.S. security.
>
> Such exceptions will also help the American intelligence community to maintain the extraordinary secrecy necessary in intelligence activities and promote cooperation from the intelligence communities of friendly countries.[31]

William Broomfield, Ranking Republican on the Foreign Affairs Committee, observed:

> Henceforth, in extraordinary circumstances affecting vital national interests—the President will be allowed to defer reporting to Congress on CIA covert action operations abroad. The key word here is defer. The President is not excused forever from letting us know about such activities. This is not an abdication of our oversight responsibility. We are just allowing him to postpone his reporting in those rare instances where, for example, prior disclosure would jeopardize the lives of the personnel or the methods employed in a particular covert action activity. As the conference report notes—"If prior notice of a covert operation is not given, the President must fully inform the select committees in a timely fashion and provide a statement of the reason for not giving prior notice."
>
> Is that unreasonable? It seems to me common sense dictates that we allow the President this flexibility so that he can effectively discharge his constitutional responsibility to conduct foreign policy. In this connection, let us not forget that covert action is an important and sometimes vital aspect of foreign policy and has been utilized by

> Presidents all the way back to George Washington.
>
> A number of my colleagues have expressed concern about how often a President might invoke the deferred reporting option provided by this measure. A look at the record to date is illuminating in this regard. Since the passage of the Hughes-Ryan Amendment in 1974, there has been only one known covert action that was not reported to Congress prior to its initiation. Our committee was subsequently briefed on that action and learned that the reason for the deferred reporting was because the President felt such prior notification could jeopardize the lives of the personnel involved in that action. Moreover, participants in this successful operation—which we all applauded when we became aware of it—agreed to participate in the action only after being assured that there would be no prior disclosure to Congress.[32]

Essentially the same interpretation was put on the bill by Rep. Les Aspin, who was then a member of the Intelligence Committee. What makes Aspin's statement particularly important is that it came from a member who was unhappy with what he perceived as the bill's "vague" language. After describing, and complaining about, the provision to limit notification to the chairmen, Aspin then went on to note: "There is, second of course, the possibility, and I guess the statutory possibility that the Administration can, in effect, just waive the whole thing".[33]

There can be no question from the legislative history, in other words, that the statute contemplated situations in which the President would not give prior notification. The remaining question is, how long is "timely"? We would maintain that the answer must vary with circumstances. To weigh circumstances requires one to use discretion; that function, therefore, must, belong to the President.

Was 11 months too long for President Reagan to have withheld notification of the Iran arms sales? We think so; he could have purchased what Rep. Henry Hyde has described as some good political "risk insurance" early by coming to Congress and getting Congress on board.* On the other hand, we are also well aware that President Carter withheld notification for about six months in a parallel hostage crisis. In fact, President Carter, in his four years in office, withheld notification two or three times—about the same number of times and for roughly the same kind of waiting period as President Reagan.** In any event, whenever it finally comes time to notify, the President will have to pay a significant political price if Congress is not persuaded by the reasons the President gives for having withheld notice.

Conclusion

We conclude that the Administration was in substantial compliance with the law during each of the Iran arms transactions. The arms sales of 1985 from Israel to Iran did not violate the terms of the AECA or FAA. It is reasonable to assume that the weapons Israel shipped to Iran in 1985 were originally supplied under AECA or FAA. These two statutes permit the President or the Secretary of State to consent to retransfers. In these instances, oral authorization was given for the transfers. Moreover, the formal reporting requirements do not apply because each of these transactions involved munitions valued at less than $14 million. The AECA and FAA seek to ensure that such retransfers foster the national security interests of the United States. The Israeli shipments were made with the agreement of American authorities and were premised on U.S. views about America's own national security interests. The substantive purposes of the AECA and FAA were met.

Moreover, the 1985 Israeli sales to Iran did not violate the requirements for Presidential authorizations or Findings under the National Security Act and the Hughes-Ryan Amendment. The National Security Act provides an alternative route apart from the AECA and FAA under which the Administration was in compliance with the law during the 1985 transactions. The terms under which the President may use the National Security Act meet all of the underlying purposes of the AECA and FAA. Therefore, Congress has been satisfied to let the one approach be a substitute or alternative route to the other.

The Hughes-Ryan Amendment contains no requirement that Presidential Findings be reduced to writing. The November-December 1985 Finding reflected in written form that the President had been briefed before the shipments on the efforts made to obtain the release of the hostages, and that the President himself had found these efforts were important to the national security of the United States. Therefore, in both the oral Findings of 1985, and the written November-December 1985 Finding, the President accordingly ratified all prior actions and directed further actions to be taken. With regard to the 1986 transactions, the President's January 17, 1986, Finding clearly satisfied the Hughes-Ryan Amendment.

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* U.S. House of Representatives, Permanent Select Committee on Intelligence, Subcommittee on Legislation, 100th Cong., 1st Sess., *Hearings on H.R. 1013, H.R. 1371, and Other Proposals Which Address the Issue of Affording Prior Notice of Covert Actions to the Congress*, April 1 and 8, June 10, 1987, p. 30.

** These examples were discussed previously in the closing section of chapter 4. As was there pointed out, in one of the cases Canadian participation was conditioned on a U.S. agreement not to notify Congress until Americans hidden in the Canadian Embassy were safely out of Iran.

Finally, the 1986 arms sales did not violate the National Security Act's requirements for notifying Congress. Certainly, the National Security Act requires agencies involved in intelligence activities to keep the intelligence committees of Congress "fully and currently informed of all intelligence activities." However, the law specifically contemplates situations in which notifying the appropriate Congressional members might be too risky. The act requires that in instances in which the President has not given prior notice of intelligence operations, he must inform the intelligence committees in a "timely" fashion.

The decision not to notify must rest on Presidential discretion. The reporting requirements of the National Security Act cannot limit the constitutional authority of the President to withhold prior notification of covert activities in exceptional circumstances. In this case, the lives of hostages were at stake such that premature notification was extraordinarily dangerous to the lives of American citizens. We conclude that, in circumstances such as these, the President must have the discretion to determine when notification is "timely." If Congress, after the fact, disagrees with the way in which the President has exercised his discretion, the appropriate remedy is a political and not a legal one.

Endnotes

1. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 18.
2. Ex. SS-4, *Hearings*, 100-6.
3 .22 U.S.C. 2753.
4. 22 U.S.C. 2780
5. 22 U.S.C. 2314.
6. 50 U.S.C. 401 et seq.
7. 31 U.S.C. 1535.
8. 50 U.S.C. 413.
9. 50 U.S.C. 2422.
10. See 22 U.S.C. Sec. 2753(a).
11. See 22 U.S.C. Sec. 2314(e).
12.See Offer and Acceptance Form, Ex. CWW-7, *Hearings*, 100-10.
13. See 22 U.S.C. Sec. 2753(d).
14. 50 U.S.C. 403 (d)(5).
15. Cooper Memorandum for the Attorney General, "Legal Authority for Covert Arms Transactions to Iran," December 17, 1986, pp. 16-17 reprinted as Ex. EM-69, *Hearings*, 100-9.
16. 50 U.S.C. 402.
17. 50 U.S.C. 403.
18. "Memorandum of Law on Legal Authority for the Transfer of Arms Incidental to Intelligence Collection," by Davis R. Robinson, Legal Adviser, Department of State, October 2, 1981, p. 5.
19. Letter from Attorney General William French Smith to William J. Casey, Director of Central Intelligence, October 5, 1981, reproduced as Weinberger testimony, exhibit 1.
20. 50 U.S.C. 415.
21. U.S. General Accounting Office, Report to the Chairmen, Senate and House Select Committees Investigating Iran Arms Sales, "Iran Arms Sales: DOD's Transfer of Arms to the Central Intelligence Agency," March 1987, p. 8.
22. 22 U.S.C. 2422.
23. See Eggleston narrative in Sporkin Test., *Hearings*, 100-6, 6/24/87, at 220.
24. See Clarridge Test., *Hearings*, 100-11, 8/4/87, at 15.
25. George Test., *Hearings*, 100-11, 8/5/87, at 201-03.
26. Clarridge Test., *Hearings*, 100-11, 8/4/87, at 17, 19.
27. Sporkin Testimony to Tower Commission, Jan. 9, 1987, pp. 7-8.
28. See Ex. SS-4 *Hearings*, 100-6; Poindexter Test., *Hearings*, 100-8, 7/15/87, at 12, 17.
29. 50 U.S.C. 413.
30. Congressional Record, September 30, 1980, p. H10044, emphasis added.
31. *Id.* at H10045.
32. *Id.*
33. *Id.* at H10047.

Chapter 10

The Use or "Diversion" of the Iran Arms Sales Proceeds

"What did the President know, and when did he know it?" That was Senator Howard Baker's famous crystallizing question about President Nixon from the Senate Watergate hearings of 1973. Political tensions were heightened in the Iran-Contra Affair when the same question was asked about the so-called "diversion" of funds from the Iran arms sales to the Nicaraguan democratic resistance. The very term "diversion," given currency by Attorney General Edwin Meese's press conference of November 25, 1986, had the sound of illegality.

Beginning with the first public revelations about the Iranian arms sales in early November 1986, reaction in the United States was a mixture of curiosity, puzzlement, and controversy. The Attorney General's press conference added a new dimension to the furor. The prospect that money had been sent to the Contras during the period of the Boland Amendments greatly intensified the scrutiny the Iran initiative received in the media. Speculation ran unchecked. The Attorney General put the amount that might have been diverted at $10 million to $30 million.[1] Members of the Congressional investigating committees suggested that the amount might have been as high as $50 million.[2] Ultimately, the diversion received more scrutiny than any other aspect of the Iran-Contra Congressional investigations.

The evidence is overwhelmingly clear, however, that the President did not in fact know about the diversion, despite Democratic wishes to soft-peddle the point by attacking Adm. Poindexter's credibility. In addition, the use of the word "diversion" itself assumes that the funds belong to the United States. We shall show later in this chapter that the legal questions surrounding the ownership of the proceeds from the Iran arms sales are by no means settled. Before we can reach these points, however, it is first necessary to explain what the diversion was, how it came about, and how much was transferred.

What Was The Diversion?

What has come to be called the diversion was simply a transfer of a portion of the proceeds of the Iranian arms sales to the private Contra resupply operation under the direction of Gen. Secord. The funds came from two different sources. The initial diversion appears to have been from Israeli funds. In late 1985, after the sale of HAWK missiles by Israel to Iran, North informed Secord that the Israelis would not ask for the return of the unused transportation expense and that Secord could use it for other purposes. Secord testified that he used it for the Contra project and so informed North.[3]

After the United States began selling Iran its own arms in February 1986, the transfers took place out of the portion of the Secord-Hakim funds that were left after the so-called "Enterprise" paid the U.S. Government all that it was owed under Economy Act prices,* and after other immediate, operational expenses. This remaining money has been referred to as the "excess," the "profits," or the "residuals," with each characterization resting on a different point of view about the ownership of the funds.

The American arms sales to Iran were carried out under a January 17, 1986, Finding signed by the President. Sales purposely were not organized as a direct government-to-government transfer. Rather, the operation was dependent on middlemen. Col. North, Gen. Secord, Albert Hakim, Adm. Poindexter, Clair George of the CIA, Attorney General Meese, and all others associated with the initial planning of the Iranian covert operation described it in the same manner: the United States would sell arms to Gen. Secord, acting as a commercial cut-out, who would in turn sell the arms to Manucher Ghorbanifar, who would in turn sell the arms to the Iranians. From the American standpoint, the organizational structure was desirable for several reasons. It gave the U.S. Government some distance from the operation, which would provide maximum protection and plausible deniability. It also satisfied the Attorney General's and Secretary Weinberger's legal concerns about proceeding under the terms of the Arms Export Control Act.

The Economy Act established the basis on which the Department of Defense, in February 1986, sold the CIA 1000 TOWs for $3.7 million dollars, or $3,700 per TOW. The price to be paid by the Iranians was not statutorily limited, however. Ghorbanifar apparently offered $10,000 per TOW as early as August 1985. This price eventually became the purchase price Ghorbanifar paid to Secord in late February 1986. It should be noted that $10,000 per TOW was not an exorbitant price. The replacement cost in 1986 of the TOW missiles utilized in the arms sales was approximately $8,000.* Under these arrangements, there was an obvious surplus. Ghorbanifar had paid Secord, the commercial middleman, the agreed-upon price of $10,000 per TOW, and Secord had paid the CIA the Economy Act price of $3,700 per TOW. The surplus on the February transaction after transportation and other expenses was on the order of $6.3 million.

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*See Chapter 9 for a discussion of pricing under the Economy Act.

How Did The Diversion Happen?

The concept of transferring a portion of the excess proceeds from an arms sale to another project was not a new one. Gen. Singlaub explained that he and North had discussed this concept in connection with arms sales to an entirely different country in early 1985.** When the Israeli arms sales to Iran begin in 1985, the U.S. was aware that the Iranians were paying relatively high prices for the arms compared to what Israel had paid for them. This meant that the United States could reasonably conclude that some funds were being put to other uses by Israel.

Secord and North were both aware that the Contras needed money. By late 1985, they had both been involved in obtaining funds and arms for the Resistance. The specific decision to transfer a portion of Iranian arms sales proceeds to the air resupply operation was the result of a number of factors, one of which was General Secord's involvement in both operations.

The first time a possible surplus came to North's attention was after the November 1985 sale of HAWK missiles from Israel to Iran. Secord had been provided with $1 million by the Israelis to cover transportation for the missiles from Israel to Iran. When the Iranians expressed dissatisfaction with the initial delivery, further deliveries were stopped, and Secord had spent only $200,000 of his retainer. Secord testified that the $800,000 surplus was eventually spent on the Contra resupply project.[4] Hence, the initial diversion appears to have occurred with Israeli funds. It set the pattern for the future.

Secord testified that he had not viewed the Iranian operation as generating any profits for him or his partners. His foremost concern, he said, was having sufficient capital reserves to ensure continued operations.[5] When, as it turned out, the sales generated money in excess of that needed for adequate reserves, he was more than receptive to the suggestion that he send the excess funds to the resupply operation. Col. North had a similar divergence of interests. As strong as his commitment was for the success of the Iranian operation, it was equally strong for the Contras. When surpluses were available, he was unmistakably motivated to advise Secord to use them for the Nicaraguan democratic resistance.

According to Col. North's public testimony, the idea of sending the Contras some of the surplus generated by the direct U.S. to Iran arms sales was offered by Ghorbanifar in late January. Earlier that month, or perhaps in late December, North had discussed with Nir the possibility of using excess funds for joint U.S.-Israeli operations, but said that this discussion never involved using the money for the Nicaraguan resistance.[6] North testified that during a January meeting in London, Ghorbanifar spoke with North in a hotel bathroom and specifically suggested using the surplus for the Nicaraguan resistance.[7] North saw an excellent opportunity to get the Khomeini regime, which was openly supporting the Sandinistas, to unwittingly arm the Contras. He thereafter set prices sufficient to create a surplus and encouraged Secord to send all available surpluses to the Resistance. After the end of our hearings, the Committees received an unsworn, unverified, and unverifiable document purporting to show that North first conceived of a diversion to the Contras by early December. An Israeli chronology claimed that North told Israeli supply officials in New York on December 6 that the Contras needed money, and that he intended to use proceeds from the Iran arms sales to get them some. When North was asked about the December 6 meeting, he reiterated that he did not recall discussing the Contras with anyone involved in the Iran initiative before the late January meeting with Ghorbanifar.[8]

We are inclined to believe North in this dispute, largely because his testimony was sworn and he was granted immunity from all charges arising out of the testimony except that of perjury. Ultimately, however, this dispute is of little importance because even if the idea was expressed in early December, it never went beyond North until after the January London meeting. Poindexter testified that he first heard of the idea when North asked him to authorize it in February.[9] North testified that he first mentioned the idea to the Director of Central Intelligence, William J. Casey, at about the same time, in late January or early February, after the post-finding London meeting.[10] In addition, North and Poindexter both testified that no one else in the U.S. Government was told about a diversion before this time. What that means is that the diversion cannot possibly have been a consideration for people at the policymaking level before North's January London meeting with Ghorbanifar.§

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*U.S. General Accounting Office, Report to the Chairmen, Senate and House Select Committees Investigating Iran Arms Sales, Iran Arms Sales, DOD's Transfer of Arms to the Central Intelligence Agency, March 1987, p. 11. The replacement cost is difficult to calculate with specificity. The basic TOWs sold in February were obsolete and were to be replaced by an improved model.

**Singlaub Test., *Hearings*, 100-3, 5/20/87, at 76. Typical of the majority's tendentious treatment of the evidence in its diversion chapter is how much it tries to make out of the so-called "Singlaub-Studley" plan for transferring arms sales proceeds to anti-communist insurgents. Yet, after a three page discussion of this plan, the majority states: "The Singlaub-Studley plan was not implemented. . . ." The majority continues " . . . but the idea of using sophisticated U.S. weapons to finance arms . . . was known to those working to support the Contras before any proceeds from U.S. sales of arms to Iran were first received." A careful reader will note that the majority is thereby admitting that the first diverted funds, those obtained by Israeli sales of arms to Iran, were received before the Singlaub-Studley plan was tabled in December, 1985. One can only wonder why the majority is intent on glossing over this aspect of the history which the majority itself develops, and instead assigning another intellectual patrimony to the diversion.

How Much Was Diverted?

The most reasonable calculations show that approximately $3.8 million of proceeds from the Iran arms transactions was spent for the support of the Nicaraguan Resistance.* During the period that the "Enterprise" received income from the Iranian transaction (November 1985 through November 1986), it also had other funds available for support of the Resistance that totaled $3.4 million. Much of this money came from foreign and private domestic donations specifically earmarked for the Contras. During that same period of time, the "Enterprise" spent approximately $7.2 million in support of the Contras. If one subtracts the $3.4 million in non-Iran funds designated for the Resistance, then the remainder of the $7.2 million, or $3.8 million, was the total amount of the diversion.**

Who Authorized The Diversion?

The diversion was authorized by Poindexter. The Committees were careful when taking testimony on this point to make sure that the principal witnesses would testify in private session before they had a chance to hear the crucial public testimony of this particular point. Thus, Poindexter testified in private session, before North's closed session or public testimony, that he had authorized the diversion at North's request.[11] North corroborated this point in his own executive session testimony before he could have known anything about what Poindexter had said.†

Poindexter also testified that he believed he had the authority to make the decision on his own to approve the use of the Iranian arms sales surplus for the Nicaraguan Resistance.†† He said that because he had worked for the President for a number of years, he felt he knew what the President would want to have done in this situation. Poindexter stated that to him, the diversion appeared to involve the use of what could be considered either third-country funds, or private funds, to support the Contras, and that he believed the President favored the use of such private or third-country funds to support them. Therefore, in his view, the President would have agreed to the use of surplus funds in such a manner. However, Poindexter said, because he thought it would be politically (as opposed to legally) controversial to use the funds to support the Contras, he decided not to inform the President of it so the President could truthfully deny knowledge if the diversion were revealed.[12]

The President has stated, however, that he would not have consented to the diversion had he known about it. He has also stated that in his opinion, Admiral Poindexter did not have the authority to make the decision without the President's approval.

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§ The Committees have, indeed, received evidence that the January 17 Finding was revised several times in January 1986 to reflect U.S. strategic goals more clearly. In addition, hearing testimony specifically showed that the "commercial cutout" arrangement was designed to mirror the previous Israeli arms sales structure for security reasons, after the U.S. had decided to make direct sales to avoid legal questions under the Arms Export Control Act. In short, both the Finding and the transactions were restructured for reasons unrelated to the diversion, which could still have been accomplished just as readily even if Israel had continued to be either the seller or had been the intermediary.

*The partners in the "Enterprise" also paid themselves $1.2 million in "commissions" out of the Iranian proceeds. That sum can be considered to have been "diverted," but it is hard to see it as an expenditure for the benefit of the Contras and the Committees have not done so.

**The majority's statements about the amount of money diverted represent what appears to be an amusing political compromise. The majority says that "at least" $3.8 million . . . in arms sales profits were used for the Contras. Yet the reader is given no factual basis whatsoever for the conclusion that more than $3.8 million was diverted, a fact apparently indicative of the continuing disagreement between parts of the majority about what the Committee's records show. Since we accept the $3.8 million number as a maximum, the majority view of the Committee actually is that $3.8 million was diverted.

† North Dep., 7/1/87, at 7. The majority purports to show a conflict between Poindexter and North over the question of the time lapse between when North requested approval of the diversion and when Poindexter approved it. Obviously, the majority is conceding here that North did request approval from Poindexter, and that Poindexter gave it. Moreover, even a casual reader of North's testimony will see that North had no specific recollection of how long it was before Poindexter got back to him. North said, "*I don't recall specifically* on this case—*but my normal modus operandi* on making a proposal such as that would be to go over and sit down with the Admiral . . . . Normally the Admiral would like to think about it . . . . (North Test., *Hearings*, 100-7, Vol. I, 7/10/87, p. 297, emphasis added). Counsel then asked: "Did you—*do you recall how long* after you first told him about this orally he got back to you?" North responded: "*No, I don't. I guess* it was a matter of weeks—or days or weeks certainly, because by February, we did it." (*Id.* at 298, emphasis added). Curiously, the majority ignores this testimony, which would conflict with its preordained conclusion.

†† North also testified in private session that he assumed until November 21, 1986, that the diversion had the President's approval. On November 21, he said, he learned from Poindexter that it did not. See North Dep., 7/1/87, at 7, 25. Poindexter testified in private session, before North's, that he had specifically decided not to tell North that the President had not approved the decision. Poindexter thus corroborates North on the essential point, although he did not recall the November 21 conversation to which North testified. See Poindexter Dep., 5/2/87, at 72; 7/2/87, at 17.

The Committees have received no documentary evidence or testimony which shows that any other U.S. Government official approved or in any other way was involved in agreeing to the diversion. Col. North testified that Director Casey knew about, and was supportive of, the diversion, but North did not suggest that Casey's approval was either sought or required.[13]

The President Knew Nothing About The Diversion

The evidence available to these Committees shows that the President did not know about the diversion. The President has made this point repeatedly. The Committees have received sworn testimony supporting the President on this point from four individuals with first-hand knowledge, and from another individual who directly corroborates some of this key testimony. The plain fact of the matter is that the Committees have no testimony or documentary evidence to the contrary.

Poindexter

Adm. John Poindexter stated under oath, in executive session and during the public hearings of the Committees, that he had not told the President about the diversion.[14] He did so even though he knew that he had thereby deprived himself of an important defense against possible criminal prosecution.[15] Poindexter also testified that he was certain that the "April 4" diversion memorandum, the only surviving memorandum that documents the proposed diversion, did not go to the President.[16] The Committees have received no testimony or documentary evidence that contradicts Poindexter's testimony on these points.*

Thompson

The Committees have also received sworn testimony which directly corroborates Poindexter's testimony. Cmdr. Paul Thompson, formerly the NSC General Counsel and assistant to Adm. Poindexter, testified in an executive session deposition as follows:

> Q: Were you ever asked by Admiral Poindexter to do any legal research relating to the question of the use of proceeds of sales of United States weapons?
>
> A: No.
>
> Q: Have I made that question general enough so you would construe it to include any aspect of the law related to a diversion such as the one we believe actually occurred?
>
> A: Yes, that's sufficiently broad. I asked the Admiral that same question myself on November 25th (1986), why he didn't ask me to do legal research on that issue.
>
> Q: What did he say?
>
> A: He said he didn't want me, to involve me in that aspect of the operations.
>
> Q: Did you have any further discussion on that with him?
>
> A: No. Well, I *did.* I asked him whether he told the President or not.
>
> Q: What did he say?
>
> A: No.
>
> *After the questions about researching the law, the deposition turned to who authorized the diversion.*
>
> Q: Did you ask him whether or not he had authorized the diversion?
>
> A: No. I didn't ask him in those concrete terms. I asked him, after I asked if he had told the President and he said no, he went on to say the reason he didn't tell the President he said he felt confi-

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*The striking thing about the majority's deeply flawed effort to impeach Poindexter's testimony on the President's knowledge of the diversion is that it not only adduces no evidence to contradict that testimony, it completely ignores directly relevant corroborative evidence (provided by Paul Thompson and presented below).

Lacking hard evidence, the majority baldly speculates that it was "totally uncharacteristic" for Poindexter not to have told the President about the diversion and that therefore, the majority implies but is apparently afraid to state, Poindexter must have done so and lied to the Committees. The majority selectively uses evidence concerning Poindexter's background and character. To suggest that Poindexter was new in the job, and would therefore not have made this decision by himself, the majority states that the "diversion decision" was made "only two months" after Poindexter became National Security Adviser. The reader is not told of Poindexter's directly relevant testimony that he had served first on the NSC staff and then as deputy national security adviser for a total of 5½ years, and therefore felt confident that he knew how the President felt about Contra policy and private and third country fundraising, of which Adm. Poindexter considered the diversion an example. This, he explained, made him confident he knew what the President would approve without being asked. (Poindexter Dep., 5/2/87, at 70-71, 75.) The majority also makes a "chain of command" argument, suggesting that Poindexter would be unlikely to have acted outside of that chain. Yet the majority ignores the fact that Poindexter testified under immunity, in private before North appeared, that he alone approved the diversion as a command decision and that he gave this testimony knowing full well, as he said, that he had thereby deprived himself of an important defense against personal criminal liability. (Poindexter Dep., 5/2/87, at 72-75.) Finally, the majority's character argument utterly ignores the fact that Poindexter was clearly the single most secretive witness the Committees heard from, a man for whom keeping secrets from long time colleagues and associates was a matter of habit. In short, Poindexter was just about the most likely witness, from a character point of view, to have made a decision to keep the diversion from the President.

> dent the President would approve it. But it was an interesting few moments because he had for himself as the naval officer and as the commanding officer of the ship, whatever you want to call it, he had a standard of what we call inescapable responsibility in the Navy which means you are inescapably responsible for what any member of your staff does. I was unable to tell whether or not he was just generally aware of the diversion and North's knowledge of the diversion or whether he was more extensively aware of it. . . .
>
> Q: But you apparently were concerned enough about it to ask him both why he hadn't told you and whether or not he had ever asked you to do any legal work that might have borne on the subject; am I right?
>
> A: Well, sure. I was—I saw that as a prime reason for his resignation or his request to be transferred and one of my missions was to help him out in all areas, and I was really just asking the question why didn't you ask for my help in this area.
>
> Q: When did the conversation occur, what date?
>
> A: November 25th. . . . [or] . . . during the course of that week . . . I guess it was the 25th.[17]

North

Lt. Col. Oliver North also testified that he had not told the President of the diversion. North testified further that he did not have any indication that the memorandums he had written to seek approval for the diversion had ever been forwarded to the President. (The memorandums were written to Poindexter and not to the President.*) North testified that none of the memorandums returned to him on this subject had any indication that they had been seen or approved by the President. North said:

> I did not send them (the memorandums) to the President, Mr. Nields. This memorandum [referring to the April 4 diversion memorandum, exhibit OLN-1] went to the National Security Adviser, seeking that he obtain the President's approval. There is a big difference. This is not a memorandum to the President.[18]
>
> I want to make it very clear that no memorandum ever came back to me with the President's initials on it, or the President's name on it or a note from the President on it. None of these memorandums [seeking approval of the diversion, written to Poindexter]. I do have, as you know, in the files that you have of mine, many, many of my memorandums do have the President's initials on them, but none of these had the President's initials on them.[19]

Col. North admitted at the hearings that he had misled Gen. Secord when he told him that the President was aware of the diversion in order to enhance the General's enthusiasm for the project.[20] North also admitted that he had made a comment about the diversion to Poindexter once as they were leaving a meeting with the President, but stated that he believed the President had not heard the remark.**

Diversion Memorandums

Although their accounts of how the diversion was authorized were consistent, North and Poindexter had different recollections about the extent to which the diversion had been documented. North said he believed he had written five memorandums seeking approval of diversions, but that he had later destroyed them. Poindexter said he did not recall seeing most of these memorandums, although he thought it was possible that he had seen the original of the surviving April diversion memorandum and then had destroyed the section that dealt with the diversion.[21] However, the references to the diversion apparently usually occupied one or two paragraphs in a multipage document. Given the amount of paper normally flowing through the National Security Adviser's office, it

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*The majority gives an incomplete account of the testimony of James Radzimski. All available physical evidence and testimony either fails to support or directly contradicts Radzimski's testimony, as the majority correctly notes. But the majority ignores the fact that Radzimski clarified his account of certain key events in his second deposition. Radzimski specifically admitted then that he had no independent recollection of any cover memorandum from Poindexter to the President being part of any April diversion memorandum on the Iran initiative, a point the majority appears to have forgotten. See Radzimski Dep., 8/11/87 at 71-72. Radzimski also admitted that, if any such document had ever existed, three separate actions, involving at least two different secure systems to which different groups of individuals have access, would all have to have been taken to remove all record of its existence. See *Id.* at 73-77. Nor could Radzimski explain why he would have seen, as he claimed, "non-log" NSC documents such as the diversion memorandum which never would have entered the NSC document control system in the first place. The fact is that Radzimski's testimony was not deemed credible by the Committees, and he was therefore not called to testify despite a premature announcement that he would be so called.

**Id.* Through what is a surprising oversight, to put it mildly, the majority's account of North's testimony about the President's telephone call to him on November 25, as it relates to the diversion, completely omits North's testimony about Earl's statements about that telephone call. North testified that he did not recall having said to Earl that the President had said "It is important that I not know." North continued: "I am sure that what I said (to Earl) was basically what I told you yesterday . . . [I] wouldn't have characterized it the way you have just indicated [Earl testified], I don't believe." (North 7/8/87, at 93). In short, North's first hand account disagreed with Earl's hearsay testimony, and North denied having given Earl the account Earl recalled.

would not be surprising if Poindexter had simply forgotten or overlooked these references.*

In any event, the Committees have no evidence to suggest that *any* of these North memorandums, which were addressed to Poindexter, ended up going to the President. The Committees actually have some documentary evidence supporting the testimony that they did not go to the President. Poindexter's practice on some occasions was to brief the President orally with respect to what he considered to be the key points of lengthy memorandums, such as the one supporting the January 17 Finding.[22] That is probably what he did with the April diversion memo, using the "Terms of Reference" portion that did not contain a reference to the diversion.[23]

Regan and Meese

The case for the view that the President did not know about the diversion does not rest solely on the corroborated, sworn testimony of Poindexter and North. The Committees also have sworn testimony from former Chief of Staff Donald Regan and Attorney General Edwin Meese concerning the President's reaction when he was told of the diversion.

According to Regan's graphic description, the President's reaction was:

> Deep distress, deep distress. You know, the question has been asked, I've seen it in the paper time and time again: did the President know? Let me put it this way. This guy I know was an actor, and he was nominated at one time for an Academy Award, but I would give him an Academy Award if he knew anything about this when you watched his reaction to express complete surprise at this news on Monday the 24th. He couldn't have known it.[24]

At his deposition, Regan testified as follows:

> Q: And do you recall what the President's reaction was [to learning about the diversion]?"
>
> A: Horror again, and—thinking back on it, it is hard to—it is like a person was punched in the stomach. I mean, the air goes out of him, crestfallen. You know, a slumping in the chair sort of thing. A real blow had been delivered here that not only was there this possibility [of a diversion], but that they—people responsible were primarily Ollie North, for whom the President had high regard as a staff person, and the Attorney General told the President that Admiral Poindexter had some type of inkling of this and should have investigated but didn't.[25]

Attorney General Meese testified at his deposition:

> Q: And what was the President's response [to being told about the diversion]?
>
> A: Well, he was very much surprised. I would say shocked, as was Don Regan.
>
> Q: Do you recall what he said, the President?
>
> A: I can't remember exactly, but it was some expression of surprise.[26]

Meese's testimony at the Committees' public hearings on this point was to much the same effect.[27]

Conclusion

From all of this evidence, it is clear the President did not know about the diversion. A contrary conclusion would have to be based on the view that a series of individuals, including the President, decided to engage in a criminal conspiracy to cover up the President's knowledge and then to lie about it in a well-coordinated manner in sworn testimony, much of it given under grants of immunity protecting the witness from use of the testimony against him for anything except a perjury prosecution. The Committees have no evidence of any kind that would lend the slightest support to this contrary view.

Who Else In The Government Knew About The Diversion?

Col. North testified that he told Robert McFarlane about the diversion at the end of the trip to Tehran in May 1986. McFarlane was by then a private citizen, and there is no indication he participated in, planned, or authorized the diversion. McFarlane has corroborated North's testimony on this point. In addition, North testified, and Robert Earl agreed, that Earl knew about the diversion.[28]

North also testified that Director Casey knew about the diversion. Casey denied knowledge of the diversion to Members of Congress shortly before he entered the hospital. In addition, when Director Casey learned that there was a possibility that someone had diverted funds from the Iran arms sales to the Contras, Col. North assured Director Casey and Deputy

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*The majority makes a strained effort to fabricate a conflict between Poindexter and North over whether North was told not to create written records of the diversion. To do this, the majority must ignore Poindexter's testimony at his private deposition, given before North's appearance, that he might have seen the diversion memorandum at or about the time it was written. (Poindexter Dep. 5/2/87, at 178-179; see also Poindexter Test., *Hearings*, 100-8, 7/16/87, at 111-113). Further, at the hearings, as the majority also fails to note, Poindexter stated: "I do recall telling (North) when I took the decision the first time that I didn't want anybody else to know about it. I don't recall telling him not to put it on paper, but . . . I thought (Colonel North) understood from earlier discussions with him, to limit the amount of paper that he prepared . . . . (*Id.* at 114, emphasis added). Poindexter testified further that North "probably" prepared the diversion memorandum at his request. (*Id.* at 114-115).

Director Robert Gates that the CIA was not involved in the diversion. Finally, Casey tried to alert Poindexter to the possible problems that were presented by such a diversion and suggested he seek legal counsel to deal with the situation. These can either be seen as efforts indicating that Casey did not know about the diversion, or as efforts to convey an understanding to Gates and others suggesting that he did not know about it in order to conceal the fact that he did.

Whether or not Casey knew, and we are inclined to believe that he did, one thing is clear. Casey's knowledge, or lack thereof, is not in any way indicative of what the rest of the CIA may have known about the diversion, since it is quite clear that Casey had information that he shared with no one else there. The Committees have no substantial evidence that other CIA personnel did know about the diversion. The CIA analysts and operatives who were involved in the Iran operation did have reason to know that there was a spread between the cost of the weapons purchased from the Government and the price being charged the Iranians for them. However, their evidence on this point was equivocal and made it difficult for them to know how large this spread was in some of the transactions. In addition, the fact that there were several intermediaries meant that even though they knew there was a potential for a "diversion," in the sense that there would be excess funds, they did not know where the excess funds were going. In this connection, it is important to remember that the National Security Council, not the CIA, actually managed the Iran arms sales operation. Therefore, the CIA did not have reason to follow the details in the way they would have done had they had been managing the transaction themselves. We have no reason to disbelieve the consistent, unequivocal denials of CIA personnel that they did not become aware of any possible diversion of funds to the Contras until very late in the day, and did not know that NSC personnel were involved in the diversion of funds.

Finally, the Committees have no evidence to suggest that other U.S. Government officials were aware of the diversion.

Did The Diversion Cause Or Interfere With The Iran Initiative?

The Iranian government clearly paid higher prices for U.S. weapons than the United States would have charged other governments. From this, some have drawn the conclusion that the diversion must inherently have interfered with the Iran initiative, because better relations between the two countries could not be based on higher than necessary prices for U.S. weapons.* In addition, some have suggested that generating surplus funds for the Nicaraguan Resistance was the main motive for moving ahead with the sales.

The question of motive was considered at length in the previous chapter. What we have just shown about the diversion only strengthens what was said there. In our view, the record supports neither of these positions. Since there is no evidence that the President or any other major U.S. government decisionmaker knew about the diversion through the time of the January 1986 Finding, it would make no sense to argue that their thinking was influenced by this consideration.

The previous chapter also gives the lie to the idea that the diversion, or "overcharging," adversely affected the success of the Iran initiative. If the Second Channel representatives were upset at the prices, negotiations would hardly have proceeded as we have described. In fact, Gen. Secord specifically testified that he was told by Iran that the price was not an important issue for the Second Channel.[29] As we have already noted, the price was not much higher than the replacement cost. In any case, the Iranians were in a war, they needed the weapons, and there was no other place to buy them. As Adm. Poindexter pointed out, the Iranians had already paid Israel essentially the same premium price the United States charged. He therefore did not think they would be concerned about the U.S. price.[30] North's testimony corroborated this point:

> The fact is that we knew that the Iranians would pay even more than we charged, from intelligence that we had gathered. We knew that during the first channel, for example, Mr. Ghorbanifar had a little frolic and diversion of his own going in which he had pocketed at least some for himself, if not for others, a considerable sum. And that even the prices we charged, he further inflated.
>
> And so we judged that risk [the risk to the hostages from overcharging] to be minimum given that they would be—basically pay whatever they could to get these items or weapons from the source that—whatever source they could.[31]

For these reasons, both Poindexter and North rejected the idea that the diversion materially affected the prospect of achieving a new relationship with the Iranian Government.[32] The concern the Iranians expressed about overcharging in connection with the Hawk shipment is not necessarily to the contrary.

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*Interestingly, some of the same people who make the argument that the diversion hurt the chance for the Iran initiative's success, also want to say that the initiative had no chance for success in the first place. It is as if they know the policy must be bad for some reason, so why not offer some inconsistent reasons to see if any can be supported.

They were concerned that their own representative, Ghorbanifar, was profiting from the overcharging. This does not mean that the United States could not have continued to charge these same prices, since the Iranians had no practical alternative but to pay them.[33]

Some Legal Questions Growing Out Of The Diversion

The technical legal questions surrounding the diversion appear to us to turn on the issue of ownership.* If the money was rightfully the property of Gen. Secord and Albert Hakim, then it follows that they were free to donate the excess proceeds to the Resistance, or use it in any other legal manner that they wished. They may have felt a moral obligation to use the money as suggested by North, but they would have been under no legal obligation to do so.

If, however, the funds belonged to the United States, it follows that the money should have gone into the Treasury of the United States and could only be sent to the Nicaraguan Resistance under the terms of an authorized disbursement. Sending the money to the Contras would not technically have been a violation of the Boland Amendment even under these conditions, because the funds were not appropriated. But if the funds were technically the property of the United States, then the Executive had no authority to direct how it would be spent, except under an appropriation or some other legal authorization.

Substantial legal arguments can be made to support and oppose each of the conclusions about who owns the Enterprise's funds. In support of the view that the funds belonged to the United States, it can be argued that Secord was acting as an agent of the United States. The facts that the price to Iran for the arms was set in consultation with North, that the United States selected Iran as the ultimate buyer, that the United States anticipated that the sales would trigger Iranian help in the release of American hostages held in Lebanon, that Secord and Hakim represented themselves as spokesmen for the United States at various times, that Secord did not expect to make a profit from his services, and that North and Secord both expected that any surpluses would be used to further U.S. interests, all support the contention that Secord was an agent and that the surplus funds were the property of the United States.[34]

On the other hand, there are substantial facts to support the conclusion that Secord was purely an independent contractor, with his own risks of profit and loss. Secord was never designated formally, in writing or otherwise, as a U. S. agent. Any argument that they were agents has to be based on a theory of constructive trust, rather than from some facts that will show an explicit, written trust relationship. In addition, Secord claims that although North gave him suggestions and he listened, he made all the decisions and therefore had the control.[35]

One relevant fact that would support the conclusion that the United States did not have an automatic claim to the funds would be the fact that the CIA and DOD were paid the full amount the law requires for the arms, and refused to transfer the weapons until full payment was received. That fact would not settle the issue, however, because the price the Defense Department set was based on the knowledge that the first buyer was another Government agency, the CIA. The real question of ownership does not turn on the relationship between Defense and CIA, but between the CIA or NSC, on the one hand, and the Enterprise, on the other.

It does seem relevant, on Secord's side of this argument, that the Enterprise assumed all of the major financial risks of the operation. For example, if the arms were destroyed during the shipment because of an air crash or otherwise, there was no agreement that the CIA would restore to the Lake Resources account the payment previously received. Similarly, if Iran was dissatisfied with the arms and refused to pay—as occurred with the transfer of Israeli arms in November 1985—there was no understanding that the CIA would repurchase the arms for the amount previously paid.[36]

We have not attempted to resolve this legal question of ownership, because it is not within the charter or province of the Congressional Investigation Committees to do so. It is a matter for the courts to decide. We do, however, believe that even if Secord and Hakim were not agents under the technical terms of the law, they nevertheless received the arms sale proceeds only because there was an expectation between themselves and North, based on trust, that they would put the money toward mutually agreed-upon public ends. Whether legally required to do so or not, therefore, they ought to feel some moral obligation to turn the surplus over to the United States, after deducting reasonable costs and compensation for services.

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*Three transactions are at issue. In February 1986, Ghorbanifar provided Khashoggi with four postdated checks for $3 million each. Khashoggi deposited $10 million in the Lake Resources account controlled by Hakim and Secord. The CIA then received its contract price of $3.7 million for 1,000 TOWs and certified the availability of the funds to DOD. The certification and payment of the amount to DOD initiated the transfer of the TOWs to the custody of Secord, who arranged for their transportation and delivery to Iran. Thereafter, Iran transferred $7.85 million to the Lake Resources account, which was supplemented by $5 million from Israel stemming from the abortive HAWK missile shipment in November 1985. Khashoggi was repaid $12 million from Lake Resources, leaving a profit for the Enterprise of $6.3 million, less the cost of transportation of the TOWs. The same general method of financing was employed in the transfer of 1,008 TOWs and HAWK spare parts in May 1986, August 1986, and October 1986. The aggregate surplus to the Enterprise in dispute approximates $8.5 million.

Conclusion

The diversion has led some of the Committees Members to express a great deal of concern in the public hearings about the use of private citizens in covert operations in settings that mix private profits with public benefits. We remain convinced that covert operations will continue to have to use private agents or contractors in the future, and that those private parties will continue to operate at least partly from profit motives. If the United States tries to limit itself to dealing only with people who act out of purely patriotic motives, it effectively will rule out any worthwhile dealing with most arms dealers and foreign agents. In the real world of international politics, it would be foolish to avoid dealing with people whose motives do not match those of the United States. Nevertheless, we do feel troubled by the fact that there was not enough legal clarity, or accounting controls, placed on the Enterprise by the NSC.

Whether viewed with foresight or hindsight, and regardless of its legal status, the decision to use part of the proceeds of the Iran arms sales for the benefit of the Contras was extremely unwise. Even if the diversion is determined by the courts to have been legally permissible, it was the result of poor judgment on the part of U.S. Government officials. The decision to proceed with the Iran arms sales was itself fraught with great potential for controversy and disagreement. There was no sound basis whatsoever for adding to the political risks of the operation by bringing into it another hotly debated aspect of American foreign policy.

It was equal folly not to tell the President of the planned use of the proceeds of the arms sales. The question of legality aside, the President should have been given the opportunity to exercise his own good judgment to instruct the participants not to allow the diversion.

The diversion decision was not the first time an unwise operation has been undertaken in the conduct of American foreign affairs, and, unfortunately, it undoubtedly will not be the last. At a minimum, the decision should generate a fuller awareness in the executive branch of the serious negative ramifications of risky and short-range decisions that have not had a full airing in the Presidential office, let alone in the halls of Congress.

The decision also serves to underscore the tremendous pressures placed on the Chief Executive and his staff in carrying out an effective and coherent foreign policy in Central America or elsewhere when Congress unnecessarily and unwisely abuses its power of the purse to manage foreign affairs with an inconsistent on-again, off-again policy. Congress needs to learn that to be an effective participant in the field of foreign affairs, it must afford Presidents from either party the latitude to plan and implement an effective foreign policy based on clear decisions that are free from annual change. When Congress learns this, the world will be more stable for us and our allies.

Endnotes

1. Attorney General's Press Conference of Nov. 25, 1986, pp. 2, 7; Ex. EM-54, *Hearings*, 100-9.

2. Sara Fritz and Doyle McManus, Inquiry Traces Millions in Iran Sales to Contras, The Los Angeles Times, March 7, 1987, at A-1.

3. Secord Test., *Hearings*, 100-1, 5/6/87, at 95-96.

4. Secord Test., *Hearings*, 100-1, 5/6/87, at 95.

5. Secord Test., *Hearings*, 100-1, 5/7/87, at 158, 162.

6 North Test., *Hearings*, 100-7, Part I, 7/10/87, at 296.

7. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 106; 7/10/87, at 295-96; Part II, 7/14/87, at 164-65.

8. *Id.*, at 295.

9. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 35; Poindexter Dep., 5/2/87, at 69-70.

10. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 139.

11. Poindexter Dep., 5/2/87, at 70-71.

12. Poindexter Dep., 5/2/87, at 70-73; Poindexter Test., *Hearings*, 100-8, 7/15/87, at 35-37.

13. North Test., *Hearings*, 100-7, Part I, 7/8/87, at 115, and 7/9/87, at 240, 245.

14. Poindexter Dep., 5/2/87, at 70-71; Poindexter Test., *Hearings*, 100-8, 7/15/87, at 37-38.

15. Poindexter Dep., 5/2/87, at 72-73.

16. Poindexter Dep., 5/2/87 at 232.

17. Thompson Dep., 7/24/87, at 66-68, 70, 71.

18. North Test., *Hearings*, 100-7, Part I, 7/7/87, at 13.

19. *Id.* at 12.

20. *Id.* at 26.

21. Poindexter Dep., 5/2/87, at 178-79; Poindexter Test., *Hearings*, 100-8, 7/15/87, at 44-45.

22. See Poindexter's handwritten notes, Ex. OLN-60, *Hearings*, 100-7, Part II.

23. Poindexter Test., *Hearings*, 100-8, 7/15/87, at 44-45.

24. Regan Test., *Hearings*, 100-10, 7/30/87, at 29.

25. Regan Dep., 7/15/87, at 62.

26. Meese Dep., 7/8/87, at 144.

27. Meese Test., *Hearings*, 100-9, 7/28/87, at 251.

28. Earl Dep., 5/2/87, at 32.

29. Secord Test., *Hearings*, 100-1, 5/6/87, at 134.

30. Poindexter Dep., 5/2/87, at 183-84.

31. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 89.

32. Poindexter Dep., 5/2/87, at 183-84; North Test., *Hearings*, 100-7, Part I, 7/9/87, at 215.

33. North Test., *Hearings*, 100-7, Part II, 7/13/87, at 89.

34. See 3 Am. Jur. 2d, secs. 17-22.

35. Secord Test., *Hearings*, 100-1, 5/7/87, at 250.

36. See Uniform Commercial Code, Sec. 2-401; 2-501; 2-509.

Part V
Disclosures and Investigations

Chapter 11

From the Disclosure to the Uncovering

On Tuesday, November 4, 1986 the *New York Times* carried a front page story disclosing a portion of the Iran initiative.[1] Only three weeks later, on November 25, 1986, the Attorney General of the United States announced that officials of his department had discovered a diversion of funds from that initiative to the use of the Nicaraguan resistance. This chapter describes our view of the events of November 1986.

We reach three principal conclusions. *First,* the President's decisions about how much to disclose were motivated by his effort to balance the need for protection of hostages and secret diplomatic discussions with the public's need for information. *Second,* once the President decided that the Administration did not have a complete picture of the Iran initiative, the Attorney General undertook an aggressive effort to obtain the facts. He then made the information available promptly to the President and to the public. *Third,* the President and the Attorney General discovered and disclosed the essential facts, despite efforts on the part of certain members of the NSC staff and others to cover up certain events, including the diversion. There is no evidence that the President directed, encouraged, or in any way condoned this coverup, a point the majority spares no effort to gloss over. In our opinion, the Attorney General and his associates did an impressive job with a complicated subject in a very short time. Far from being inept, or parties to a cover up, the Department of Justice was responsible for uncovering the diversion of Iran arms sale proceeds to the Contras.

Early November

The Iranian initiative was disclosed for political reasons by high level dissident Iranian religious officials. The *New York Times* report was based on a report from a Lebanese weekly, Al-Shiraa. Its report was in turn based on a politically inspired leak from Iranian dissidents bent on retaliation for efforts by the Iranian Government to curb their support for wide scale terrorism and possibly to reach an accommodation with the United States. At least one of the key dissidents has recently been executed by that Government.*

American officials had learned of the pending disclosure of McFarlane's May trip to Tehran at a secret meeting in Europe a week before the disclosure appeared in the press. Their immediate concern was for the lives of remaining American hostages. They also wanted to continue the secret discussions, as did officials of the Government of Iran. In addition, there were serious questions about the impact of the disclosures on a significant American ally, Israel.

During the week after the *New York Times* story, there were vigorous disagreements within the Administration about what, if anything, the Administration should disclose about the Iran initiative. As the situation was later described by former Chief of Staff Donald Regan:

> I recall discussing with other members of the staff, "The cover is blown here. We have got to go public with it. We have got to tell the Congress, we have got to tell the American public exactly what went on so they were aware of it."
>
> Mr. Smilijanich. What did Admiral Poindexter recommend?
>
> Mr. Regan. [His recommendation was] Absolutely not. It was later reported in local papers here that we had a shouting match . . . [W]e did have a difference of opinion—a strong one. . . . His reasoning was a good one, that Jacobsen had just come out as a hostage, North was preparing to go to London and actually did go to London that first weekend in November—what was it, the 8th or 9th, in through there [to meet with Iranian officials]—and there's a possibility of two more prisoners coming out, two of the original ones, and maybe even the additional three, the later ones. And why blow that chance? We got to keep the lid on this, we got to deny it, we're endangering their lives.
>
> And then I might add here, a very dramatic thing happened. I recall it vividly. Jacobsen had a Rose Garden ceremony welcoming him back. He had said in his remarks he had cautioned the media about discussing this. On the way back, as the President and he were mounting the steps to

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*For more details see asterisk in Chapter 8, at 520.

> the colonnade to go back into the Oval Office, there were shouted questions from the media about, "What are you going to do about the hostages, what about the others that are there?" And Jacobsen turned and very emotionally said, "For God's sake, don't talk about that, that is exactly what I have been saying, you are endangering lives of the people I love, these are my friends." That made quite an impression on the President. And even though that same day I urged him again to get this story out, he said, "No, we can't Don,' he said, "We can't endanger those lives." And he didn't.[2]

Regan's testimony shows the Administration's concern for the hostages. North's notes of a meeting with Iranian representatives on November 7, three days after the New York Times story, show both the desire to continue the negotiations and a concern for the hostages:

—"Holding to no comment—
—We recog.(nize) that public statement, RR admitting mtgs. w/ [2d Channel] wd be dangerous for you and Speaker
—Need to know WTF going on
•Press release
•[Second Channel] told in Frankfurt 2 host (two hostages)."

November 10-20

Public pressure for an account of the Administration's dealings with Iran led during November to meetings, a speech and press conference by the President, and testimony by various Administration officials before Congressional committees. Questions were raised both inside and outside the Administration about the Administration's compliance with civil statutes governing Executive-Legislative branch relations in the conduct of covert activities and arms transfers. The President and his advisers continued to grapple with the question of how to balance the diplomatic concerns just described with the need for public disclosure.*

According to Regan's notes of a November 10 meeting, the President opened the discussion with a statement to the effect that "as a result of media, etc. must have a statement coming out of here. . . . Some things we can't discuss because of long term considerations of people with whom we have been talking about the future of Iran." [3]

At that same meeting, Poindexter made a presentation on the history of the Iran initiative, that omitted or misstated certain facts. Poindexter also noted correctly the fact that the Iranians wanted to continue contacts despite news reports.[4] Poindexter noted that North had met with Iranian representatives the previous weekend, that "Iranians happy with our no comment. Raf will have to speak out due to world press comments." [5] At a later point, the President noted: "We should put out statement . . . but cannot get into q & a re hostages so as not to endanger them." [6]

In the period between November 10 and November 21, the Administration continued to try to balance its concern for the hostages and the Iranian initiative with the need for public disclosure. The President addressed the nation on November 13, and then agreed to answer questions concerning this matter on November 19. The drafting of the speech, and the Presidential press conference preparation on these issues, were done by the National Security Council staff acting under Admiral Poindexter's direction. Some of the information provided during those events was incorrect. However, the speech, and the President's answers at the press conference, provided basic information concerning the initiative from the President's point of view while attempting to withhold certain information in order to protect diplomatic sensitivities such as the role of the Israeli Government.[7]

There is evidence that the President and most responsible Administration officials were trying to keep the public record accurate. For example, the White House issued an immediate correction with respect to one factually incorrect statement the President made at the November 19 press conference. Regan testified that this inaccurate statement resulted from the President's confusion about what information could be revealed without causing national security problems.[8] By this time, however, Secretary Shultz had concluded—based on the November 13 speech and November 19 press conference answers—that the President was being misled on some key facts by certain members of the NSC staff, and sought a meeting with the President to explain this to him in detail. The meeting occurred on November 20.

During Shultz's meeting with the President, they reviewed what Shultz believed were a number of inaccurate or misleading statements the President had made concerning the Iran initiative.* The State Department briefing paper prepared for this occasion went through these matters in considerable detail, including comments on such matters as the legality of various arms transactions, possible political connections which might be drawn between Iran and Nicaragua, and so on.[9] The points in Shultz's briefing paper were designed to give the President what Shultz believed to be a more accurate picture of the political history and rationale for the Iran arms deal. Shultz described the meeting as "a long, tough discussion, not the kind of discussion I ever thought I would have with a President of the United States. But it was bark off all the way." [10]

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*It is interesting to note that while the President and his staff were wrestling with the question whether to disclose the mission and thereby jeopardize the hostages, the leader of the Government of a close ally in that part of the world had a senior aide call North to ask the President and Poindexter to flatly deny that there had been an operation such as the one reported about McFarlane in Tehran. Earl Dep., 5/30/87, p. 74-75.

[7] Regan Test., *Hearings*, 100-10, 7/30, at 23-25. The majority's effort to show that the President made inaccurate statements at his press conference completely ignores the fact that Israel's involvements in U.S. sales of arms and direct sales of arms were then regarded as diplomatic secrets which should be concealed to protect Israel's security. Several of the President's other arguably inaccurate statements made then were clearly based directly on information given to the President by certain members of the NSC staff.

*The majority makes much out of the Secretary's "battle royal" with the NSC to get out the true facts. It is worth noting in this connection how much of the disagreement at the time rested on matters such as differing interpretations of intelligence reports, stra-

Testimony and Chronologies

The need for additional, detailed information on the Iran initiative was intensified by the need to testify before the Intelligence Committees on November 21. It became clear that the Administration had only an incomplete "institutional memory" on the origin and conduct of that highly compartmented initiative and that different participants had conflicting memories of certain key 1985 events.

The events surrounding the creation of false and misleading chronologies have been discussed in detail during the hearings and there is no need to review the matter here. These chronologies misstated the fact of the President's authorization for the 1985 arms shipments, the Israeli participation in those shipments, and contemporaneous knowledge by United States Government officials of the nature of those shipments. It is sufficient to note that the preparation of these materials was almost exclusively the work of then present and former members of the NSC staff, particularly North and McFarlane. Their false presentation of these events appears to have been acquiesced in, either knowingly or unknowingly, by Casey and Poindexter.

The later versions of the chronologies, and the discussions of draft Congressional testimony, led some Justice Department officials to realize that they did not know some of the significant facts about the initiative. (The Department had been involved only tangentially in the initiative and in responding to issues raised by the public disclosure.) The Department officials also realized that certain other facts concerning the 1985 arms sales were disputed among the participants. In response to these Justice Department concerns, Casey altered the draft testimony he had prepared for November 21 to omit false statements that might otherwise have been made.[*]

Justice Department Investigation

On the late evening of November 20, 1986, Justice Department officials alerted Attorney General Meese about the factual dispute between various participants in the Iran initiative on certain key events surrounding the 1985 arms sales. They indicated "that a lot of people had different recollections and that the situation was pretty well fouled up because of that." [11] There was no suggestion of intentional wrongdoing, and Meese did not think that was the situation described to him then. The majority report agrees.[**]

On the morning of November 21, Meese suggested to President Reagan that the President should authorize Meese to conduct an investigation to pull together an account of all the facts. The reason was to support a review of the initiative at a meeting of the National Security Planning Group scheduled for Monday, November 24, 1986. Accordingly, the investigation was conducted over the weekend of November 21-24, 1986.[12]

At that time, the Attorney General had no reason to believe that any crime had been committed.[†] The simple fact is that the statutes that might possibly have been bypassed by the arms sales were not criminal statutes.[††] For those who would argue that the investigation should have been a criminal one from the first, it is worth noting that a Justice Department Criminal Division memorandum—prepared independently and dated November 22, 1986—reviewed these

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tegic motives and similar matters of judgment. Only with hindsight is it clear that concerted efforts to slant the facts, rather than honest differences of recollection or judgment, were involved in many cases. This is a fact that a dispassionate student of events would be well advised to consider.

[*] The majority are at some pains to show that North attempted to falsify this Casey testimony. North claimed his proposed changes were a reaction to CIA drafts, and that he and Casey made changes to remove affirmatively untrue statements before the Department of Justice intervened. We are uncertain whether to believe North on this point or not, but note that exhibits OLN-28, OLN-29, and OLN-30 tend to support his version of events.

[**] "Cooper did not know who was right or wrong. (Maj. Rept., Ch. 19)." The majority states that Meese had been apprised of the specifics of this dispute earlier on Nov. 20 by Deputy Attorney General Burns after Burns had been informed of the problem by State Department Legal Adviser Abraham Sofaer. The facts are otherwise. Meese and Burns spoke on an unsecured car telephone line while Meese was en route to the airport. Burns was very general in describing the problem while Meese was equally general in assuring him that as a result of the meeting he had just left problems had been resolved. (Meese Dep., 7/8/87 at 174-175) Meese was not given specific information showing the inaccuracy of the proposed testimony at that point. In any event, within a few hours, Justice Department officials who stayed involved in the process discovered the conflict and informed Meese, who decided that the Casey testimony should be altered. See Meese Test., *Hearings*, 100-9, 7/28/87, at 266-267.

[†] The Attorney General has extensive criminal investigation and prosecution experience. See Meese Test, *Hearings*, 100-9, 7/28/87, at 263.

[††] Indeed, the Attorney General discussed the matter with FBI Director Webster on Friday afternoon and both agreed it would be premature to involve the FBI in an investigation at that point.

statutes and reported no basis for criminal prosecution based on information then available.***

The Attorney General's brief investigation received exhaustive scrutiny during the course of the hearings, both during his own testimony and that of Assistant Attorney General Charles Cooper. That investigation has been criticized on a number of points. We think the criticisms are without merit. The Attorney General assembled a team of competent attorneys, two of whom in addition to him had been confirmed for their jobs by the United States Senate, and all of whom had directly relevant responsibilities within the Department of Justice for national security matters, to conduct the fact finding inquiry.[13]

On November 21, the Attorney General personally requested that the National Security Council make available to his staff all relevant documents concerning the Iran initiative.[14] The investigating team proceeded to interview all material witnesses with respect to the 1985 arms sales.[15] Witnesses were repeatedly instructed by then that the President's interests would be best served if the Attorney General were given a full and accurate account of what happened.[16] Yet McFarlane, North and Poindexter made false, misleading, or inaccurate statements to, and concealed directly relevant information from, the Attorney General and his representatives. Despite this, the Attorney General's investigation uncovered "the essential facts that are still the essential facts today." [17] Although the Committee majority makes much of its purported discovery of "the Enterprise," that network of shell corporations and secret bank accounts really represents the mechanics of the diversion the Attorney General discovered, and little else.

In the course of the review of documents on November 22, Justice Department officials discovered a memorandum that showed a plan that part of the Iranian arms sales proceeds were to be used to support the Nicaraguan Democratic Resistance, but provided no evidence that the plan had been carried out. They immediately arranged to interview North the next day, Sunday, and waited until the end of that interview to confront North with the memorandum. Meese specifically testified to North's surprise on being shown the memorandum. After North had confirmed that a diversion of funds had in fact occurred, the Attorney General and his associates undertook to determine who knew about, and who might have authorized, such a diversion.*

We think that the suggestion that the Attorney General's investigative procedures changed in some irregular manner after the discovery of a possible diversion is particularly unfair. We encourage any reader who is interested in this issue to review the colloquy on this subject between the Attorney General and Senator Mitchell in which Senator Mitchell raised this issue and then dropped it after the Attorney General directly challenged him for doubting Meese's testimony about it.**

***Meese Test., *Hearings*, 100-9, 7/28/87, at 200. The majority makes a halfhearted effort to imply that the FBI or the Criminal Division of the Department of Justice should have been called in earlier than they were, possibly even as early as November 21. The majority's reasoning ignores the following points. The "facts" on which the majority relies, such as the Casey testimony and possible Arms Export Control Act violations were not criminal in nature, at least so far as could reasonably be determined at the time. Even more importantly, the majority utterly ignores the fact that the Attorney General specifically testified that he had consulted former FBI Director Webster and the FBI top leadership after the disclosures occurred and had been assured that their view was that Meese had acted properly; Webster also took this position at his confirmation hearings. See Meese Test., 7/28/87, pp. 281-282, 291-292). Finally, the majority ignores the fact that the head of the Criminal Division, also a political appointee, testified that his concerns about Criminal Division involvement, which were not expressed to the Attorney General at the time, were based on existing Criminal Division court actions unrelated to the Iran initiative and to management issues, not matters of propriety or judgments about evidence of criminal conduct. See Weld Dep., 7/16/87 at 13-20.

*The allegation has also been made that Department officials disregarded other "evidence" which came to their attention concerning the possibility of such a diversion, such as the use of Southern Air Transport in both the Iran and Contra operations. The question is moot because the Justice Department in fact quickly discovered the first hard circumstantial evidence that members of the NSC staff had been involved in a diversion, the diversion memorandum itself. However, a close examination of this alleged "evidence" shows that it was speculation communicated in a vague, general way which related to a physical or political connection rather than to evidence of financial diversion. See Sofaer Dep., 6/18/87 at 68-70; Meese Test, *Hearings*, 100-9, 7/28/87, at 270-71, 277; 7/29/87, at 414-415. Although there was some speculation by officials at the Department of State and the Central Intelligence Agency (based on price differentials) about some type of a diversion, there was no evidence to suggest that the funds had gone to Nicaragua, or that the disposition of any surplus was being directed by certain members of the NSC staff. The majority attempts to bootstrap the fact that some of this vague information may have been conveyed to the Attorney General into an attack on the truthfulness of the Attorney General's account of his meeting with Director Casey on November 22. The members of the majority are much bolder in a report which the Attorney General never saw before it went into print than they were when he testified and therefore could respond to similar cheap shots. Suffice it to say that the Attorney General has consistently and credibly recounted events at this meeting where appropriate in his testimony in various forums, including our public hearings. See Meese Tower Board Test, 1/20/87, at 32-33; Meese Dep., 7/8/87 at 121-123; Meese Test., *Hearings*, 100-9, 7/28/87, at 113-115) He testified he made a deliberate decision to protect his investigation by not asking Casey for information before confronting North; in our view, this was a correct and successful decision. See Meese Test., *Hearings*, 100-9, 7/28/87, p. 278.

**Meese Test., *Hearings*, 100-9, 7/29/87, p. 331-334. The majority ignores the fact that virtually all of the interviews involved lasted only a few minutes, took place hurriedly between other meetings, and involved only a couple of basic questions: who knew of the diversion and who authorized it. (See Meese Test., 7/28/87, p. 280) The majority also ignores the fact that Meese's accounts of these meetings have been corroborated in substance by the living participants who have been questioned by the Committees. The majority's sporadic efforts to suggest conflicts are strained, to put it mildly. A classic example of the majority's reaching is their statement "Meese met alone with Regan and the President."

The Attorney General's November 25 press conference report was based principally on admissions made to him on November 23 by North. At the press conference, the Attorney General repeatedly made clear that there were a large number of matters on which his information was uncertain and subject to additional review and correction.[18] At that time, Justice Department officials were not aware of any document shredding or altering by North and others. As McFarlane testified, although he did not participate in the shredding he did not inform Meese that North had told him it might occur.[19] Similarly, Justice Department officials had no immediate way to determine that several of these officials gave them misleading or inaccurate answers to their questions. The majority's pointless cavilling about this press conference is very much indicative of the quality of their work in this area. As noted, despite this attempt at a coverup by certain NSC officials, the Attorney General's investigation turned up the facts that are still the essential ones today.

There is no evidence that the President directed, encouraged, or otherwise in any way condoned a coverup. We reject as completely unsupported by the record any suggestion that the Attorney General or his staff ignored signs of potential criminal behavior or consciously sought not to obtain information in an effort to assist or protect the President. After intense scrutiny, by two Congressional committees with a very large staff, it is clear that the Attorney General and his staff conducted themselves honorably and disclosed to the President and the public their findings without regard to any political damage which would ensue.*

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*On December 4, 1986, at the request of the Attorney General, a motion was filed with the Special Division of the Court of Appeals for the District of Columbia Circuit seeking the appointment of an Independent Counsel.

Endnotes

1. Ihsan A. Hijazi, "Hostage's Release Is Linked to Shift in Iranian Policy," New York Times, November 4, 1986, A1, A10.

2. Regan Test., *Hearings*, 100-10, 7/30/87, at 21-22.

3. Regan notes of November 10 meeting, Ex. DTR-41-A, p. 1, *Hearings*, 100-10.

4. Regan Test., *Hearings*, 100-10, 7/30/87, at 23.

5. Ex. DTR-41A, p. 5, *Hearings*, 100-10.

6. Ex. DTR-41A, p. 9, *Hearings*, 100-10.

7. See p. 562.

8. Regan Test., *Hearings*, 100-10, 7/30/87, at 24-25.

9. Ex. GPS-45, *Hearings*, 100-9.

10. Shultz Test., *Hearings*, 100-9, 7/23/87, at 44.

11. Meese Test., *Hearings*, 100-9, 7/28/87, at 267.

12. It is noteworthy that Judge Sofaer, on whose suspicions and speculation the majority narrative relies extensively, often without describing them as such, testified that he began to suspect a coverup on the afternoon of November 20. (Sofaer Dep., 6/18/87, at 41-42). This seems as good an indication as any that the Attorney General acted in a timely fashion. The majority's innuendo that the Attorney General did not move aggressively on this matter is utterly belied by the fact that, for example, one of his staff spent until dawn on November 22 reviewing intelligence reports. See Cooper Test., *Hearings*, 100-6, 6/25/87, at 24-27 and passim.

13. See Meese Test., *Hearings*, 100-9, 7/28/87, at 281.

14. *Id.* at 268.

15. Ex. CJC-1, *Hearings*, 100-6; Ex. EM-42, *Hearings*, 100-9.

16. Meese Test, *Hearings*, 100-9, 7/28/87, at 269.

17. Meese Test., *Hearings*, 100-9, 7/28/87, at 201, quoting Secretary Shultz.

18. Meese Test., *Hearings*, 100-9, 7/28/87, at 269, "at least 40 instances."

19. McFarlane Test., *Hearings*, 100-2, 5/11/87, at 180-81, 183.

Chapter 12
NSC Involvement in Investigations

Introduction

The majority chapter entitled "NSC Involvement in Criminal Investigations and Prosecutions" raises questions about the connection between the work of the National Security Council and traditional law enforcement activities. Unfortunately, the majority combines carelessly assembled information about matters which any fair-minded person would conclude raise no important issues, with scattered and conclusory judgments about matters where real questions of judgment exist.

Because of the necessity for accurate and timely information about threats to persons or property posed by those who may wish to cause harm for reasons connected to the foreign policy of the United States, the national security community must sometimes be involved in pending criminal investigations undertaken by domestic law enforcement agencies. The real question is not whether but when and how much involvement is appropriate. To answer this question requires a close examination of the reasons for such involvement and the manner in which such involvement is responded to by law enforcement officials.

The record of the various investigations discussed by the majority shows that law enforcement agencies outside the NSC, from the Department of Justice, to the FBI and Customs Service, responded in an appropriate manner to requests for investigations prompted by such reasons. In addition, the record of several of the investigations in which NSC personnel became involved reveals that NSC involvement in these activities, at least at their preliminary stages, was appropriate. However, their involvement in others was questionable at best.

The circumstances of each case will determine whether such involvement was appropriate. We encourage each reader to examine the facts of each investigation carefully to make this determination. In order to set the record straight, we provide a brief review of the investigations related to the Iran-Contra affair in which the NSC staff was involved.

Basically, the majority alleges that certain Administration officials, particularly Colonel North, became improperly involved in a number of investigations relating to Contra activities. However, the majority's highly critical analysis is based on a flawed methodology. In view of the majority's intent to show that Col. North acted improperly, it is noteworthy that the majority in most cases declined to ask Col. North himself, during six days of public testimony, about these allegations against him. During the Committees' investigation, the majority obtained information on these matters from witnesses who were in contact with North, but North was never asked to give his side of these events. The majority uses selected entries from North's written notes of conversations and meetings, but even though these entries are often abbreviated and cryptic, the majority declined to ask North to explain them. Instead, the majority attempted to interpret what these notes "suggest." In light of this flawed methodology, the majority's conclusions regarding purported interference with various investigations cannot be considered objective. Moreover, the following brief discussions of several of these investigations demonstrate some additional problems.

Miami Neutrality Act Investigation

The majority has analyzed a charge that a Miami investigation of an alleged conspiracy by a pro-Contra group to violate the Neutrality Act was impeded by officials of the Department of Justice. The majority has concluded that the investigation was not aggressively pursued. However, a review of the facts clearly shows that the charge of interference was based on one witness's testimony, which was contradicted by all of the other witnesses. Further, any delays in the investigation were caused by legitimate problems.

David Leiwant, an Assistant U.S. Attorney in Miami, has claimed that he overheard one side of a telephone conversation on April 4, 1986, between U.S. Attorney Leon Kellner in Miami and someone at the Department of Justice, in which Kellner was advised that the Department wanted him to go slow on a pending investigation of possible Neutrality Act violations. According to Leiwant, after the phone conversation ended, U.S. Attorney Kellner stated that the Justice Department wanted the investigation to go slow and to be kept quiet. Kellner reputedly made these statements with a sneer, suggesting that he would ignore these requests.[1]

Leiwant's account of this incident is unsupported by any other evidence. In fact, every other person who was present at the meeting when the telephone conversation allegedly took place denies Leiwant's version of events. In addition to Leiwant, five people were present at this meeting in U.S. Attorney Kellner's office on April 4, 1986—Kellner, Chief Assistant U.S. Attorney Richard Gregorie, Executive Assistant U.S. Attorney Ana Barnett, Special Counsel Lawrence Scharf, and Assistant U.S. Attorney Jeffrey Feldman, who was handling the investigation. All have denied Leiwant's claim that Kellner received a telephone call from the Justice Department instructing Kellner to go slow.[2]

Leiwant has speculated that the alleged Justice Department call may have come from D. Lowell Jensen, Stephen S. Trott, or Mark M. Richard,[3] but each of these three officials denies any such conversation and further denies knowledge of any attempt to impede this investigation.[4]

Leiwant himself concedes: "I was listening to it [the alleged telephone conversation] with half an ear. . . ."[5] Also, he is certain that he never heard Kellner tell Feldman to go slow.[6]

It is noteworthy that Leiwant failed to discuss with his superiors this disturbing telephone conversation which he purportedly overheard.[7] Instead, Leiwant began to discuss this matter with outsiders, even though he had neither requested nor received the required departmental approval to disclose anything about this ongoing investigation.[8] Within days of the April 4, 1986, meeting, Leiwant called two Washington Post reporters in Washington, D.C. According to his testimony, he mentioned to both of them that he might have information about the Contras and Nicaragua. Since they were not very interested, he purportedly did not say much.[9]

Then, in August 1986, Leiwant leaked his allegation to John Mattes, a defense attorney who represented Jesus Garcia, the informant who provided early information about the alleged Neutrality Act violations. Mattes' client was awaiting sentencing on a federal conviction, and he could have benefited if his information led to new indictments.[10] Then, Leiwant told two investigators from the Senate Foreign Relations Committee. Later, Leiwant told his story to U.S. Senator John Kerry.[11] The publicity generated by Leiwant's actions led to these Committees' inquiry.

Leiwant has alleged the Neutrality Act investigation was proceeding too slowly.[12] Similarly, the majority has claimed that the investigation was not aggressively pursued. These allegations ignore several important factors.

Assistant U.S. Attorney Feldman, who was assigned to handle the investigation, was relatively inexperienced. Moreover, the information his investigation was eliciting was disorganized and, in some respects, unreliable. Feldman himself described the case as a "confused mess."[13] For instance, a polygraph of Jesus Garcia, the convicted felon who provided early information about the reported conspiracy, was inconclusive and showed deception on an important issue. Garcia later admitted he had lied about that issue.[14] One of the two FBI agents assigned to the investigation testified that Garcia provided inaccurate information,[15] and the other agent testified that Garcia did not have a great deal of credibility.[16]

Another example of evidentiary problems was the information provided by witness Jack Terrell. Most of Terrell's information was found to be based on hearsay rather than his direct observation.[17] Feldman's superiors felt that the investigation needed additional work, and that the case was not sufficiently developed to be presented to a grand jury.[18]

Furthermore, the delay in the progress of the investigation was affected by the press of other investigations.[19]

In this regard, it is noteworthy that the Miami U.S. Attorney's Office is recognized as one of the busiest in the nation, with limited resources to apply against an ever-increasing criminal caseload.

Southern Air Transport Investigation

The majority also raises questions, in another chapter of their report, about the handling of an FBI/Customs investigation of Southern Air Transport. The FBI, at least, began an investigation of Southern Air Transport for possible violations of the Neutrality Act after the shootdown of the Hasenfus aircraft. However, Southern Air Transport also provided the air transportation services for most of the Iran initiative. This initiative continued after the Hasenfus shootdown and in fact produced one hostage in early November 1986, after a shipment of arms involving Southern Air Transport.

Whatever the reader concludes about the propriety of the actions of the NSC staff in requesting a delay, the record is clear that the Department of Justice and FBI officials who granted it acted entirely properly. They were told that the delay was required for the purpose of protecting the Iran initiative. They checked to determine whether the ongoing investigation would be impeded, and were told it would not be. They granted a delay conditioned on the conclusion that the ongoing investigation would not be affected, and asked that it be resumed promptly, as it was.[20] The Attorney General specifically testified that when he was asked to grant a delay, he was not told of any connection between White House officials and Southern Air Transport's work in the Contra resupply operation, or of Southern Air Transport's involvement in this operation.[21]

Instigation of Investigations

The majority claims: "North attempted to exploit his contacts with the FBI to attempt to instigate or intensify investigations of people and organizations perceived as threats to the Enterprise. He was ultimately assisted in this effort by Richard Secord and Glenn Robinette."[22]

These statements by the majority are false, as we shall show below. The first instance cited by the majority appears to have been based on a good faith but mistaken belief about FBI jurisdiction. The other two instances cited by the majority, where the FBI became involved in a matter in which North had an interest, were based on either legitimate human concerns or a legitimate desire to protect the life of the President of the United States. In the latter instance, it is abundantly clear that North did not "instigate or intensify" any investigation at all.

In the first instance cited by the majority, North appears to have suggested, in conversation, an FBI investigation of certain individuals based on a suspicion that a foreign government was secretly financing or supporting a lawsuit against various United States citizens, a matter about which it would have been legitimate for North to inquire for national security reasons and, which if true, might have constituted a fraud on the courts of the United States. North, a nonlawyer, was flatly told that the FBI did not have the legal authority to investigate such a matter, and did not pursue the request.

The second instance discussed by the majority is based on North's request for an investigation of vandalism and harassment directed against him. The FBI investigation occurred in May and June, 1986. North requested the investigation because of incidents of vandalism that had been directed against him at work and at home which he believed might be related to the actions of foreign intelligence sources. There is no doubt that the incidents of harassment in fact occurred, and the FBI appears to have concluded that they might have been associated with the dates of ". . . Congressional votes on Contra aide (sic) . . ."[23] They, together with threats against North's life which occurred at about this time, were sufficient to motivate North to have a sophisticated security system installed around his home at precisely this time.[24]

While North may have been completely wrong about the source or nature of the vandalism which was being directed against him, we do not find anything in the record to suggest that North's conduct was based on anything other than a good faith belief that this harassment might have been based on such actions. Given North's position in government, and the nature of his official duties, this possibility could not be completely discounted. We therefore see nothing improper in North's having asked the FBI to investigate even though some of the persons who were to have been interviewed for information might have been connected to or involved in political opposition to North's Contra activities, since such persons were logical sources of information necessary to a proper investigation. The FBI, in turn, appears to have acted to determine whether there was any possibility that North's concerns might have a reasonable basis and then to have dropped the matter.

But it is the third instance cited by the majority which we find particularly egregious. This instance concerns an FBI investigation of Jack Terrell based on the possibility that Terrell had threatened the life of the President. The majority snidely suggests that North was responsible for using the FBI to investigate Terrell. They say: "North ultimately hit on a better formula [for having such investigations conducted], with Secord's assistance."[25] The facts clearly show just the opposite, and the majority has so clearly disregarded the facts we are forced to question its motives.

Significantly, it was the FBI which first independently obtained information about a possible threat against President Reagan. This information came from a classified source in mid-1986.[26] The FBI concluded that the threat "probably" came from Jack Terrell, a mercenary who had been associated first with Contra forces, and then with pro-Sandinista forces.[27] The FBI therefore sent a request to various federal law enforcement and national security agencies, including the NSC, specifically asking them for information concerning Terrell, according to testimony by FBI Executive Assistant to the Director Oliver B. ("Buck") Revell.[28] The majority completely omits to mention that the FBI asked the NSC for information concerning Terrell. By coincidence, North was aware that Terrell was assisting the plaintiffs in a lawsuit against Secord and others and that Glen Robinette was involved as an investigator for Secord in that lawsuit. However, North and Robinette had never previously discussed Terrell, according to Robinette.[29] North called Robinette and asked if he had any information about Terrell. Robinette said yes, and North asked him to provide it to the FBI. North did not ask Robinette to limit his cooperation with the FBI, or to withhold any information from them, according to Robinette.[30] Robinette thereafter met with the FBI and assisted them in establishing surveillance of Terrell.* In any event, the FBI shortly thereafter discontinued contact with Robinette and surveilled Terrell until it concluded that he was not a threat to the President.**

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*Robinette specifically denied that he was asked to wear a "wire" for surveillance purposes; as a former electronic surveillance specialist, he was certain he would have remembered such a request. (Robinette Dep., 11/5/87, at 34-36.)

**Revell Dep., 7/15/87 at 32, 36. When interviewed by the FBI in connection with the Terrell matter, North disclosed Robinette's activities for Secord in connection with the Florida civil lawsuit brought by Honey and Avirgan in which Secord was a defendant. (7/25/86 FBI Report of 7/22/86 interview of North, at 2.) North acknowledged his involvement in U.S. Nicaraguan policy, but denied Secord "works for him." In short, North appears to have

In all of this, we are unable to discern anything that resembles a politically motivated effort on North's part to harass Terrell. The FBI's information concerning the threat was real, obtained independently of North, and pursued with national security agencies in the normal manner. The fact that North knew of Terrell by reputation is nothing but coincidence, and we think it is extraordinarily unfair to imply that Colonel North or General Secord acted in this instance in any manner inconsistent with their obligations as citizens or employees of the United States. We think it is unfortunate that the majority is so bent on pressing the thesis of this chapter that they have included misleading information about this incident in an effort to try to reinforce it. Clearly, the majority would not want to suggest that anyone who had potentially useful information about a threat to the life of the President should withhold it for fear of later being accused of political harassment.

The "Reward a Friend" Investigation

The majority has alleged that North and other government officials tried to influence the sentencing of a former official in a Central American country, who had pleaded guilty to two felony counts in the United States. The official had allegedly provided assistance as a "friend of the U.S." in Central America. Yet, the only purported result of government support of the official was his reassignment to a minimum security prison.[31] Such reassignments are commonly requested and granted.

This official had previously received official recognition for his services to the U.S. in the region. The majority notes that North was concerned that if the official was dissatisfied with his sentencing in 1986, he would "break his longstanding silence about the Nic[araguan] Resistance and other sensitive operations."[32] The majority further notes that North wanted "to keep the official from feeling like he was lied to in the legal process and start spilling the beans."[33] The majority is unable to concede that the official, assistance to the U.S. may have involved legitimate intelligence operations. Instead, the majority boldly asserts that the NSC staff's "ultimate motive appears to have been a desire to prevent disclosure of certain questionable activities." Significantly, the majority never asked North to address the issue of the official's assistance to the U.S. Accordingly, the majority's suggestion of a cover-up of "questionable activities" should be recognized as pure speculation.

The Fake Prince

The majority's main allegation regarding the "fake prince" is that in 1985 Col. North interfered with the FBI's bank fraud investigation of this "Saudi prince," because North was attempting to develop this individual as an asset in the Iran initiative and in Contra activities. (The "prince" was ultimately discovered to be an Iranian imposter.) North allegedly interfered because during an FBI interview he requested that an upcoming FBI interview of the "prince" be delayed for several days, so as not to interfere with the "prince's" intended donation to the Contras. However, the FBI report notes: "In no way does North want to interfere with a criminal prosecution of the prince . . ."[34] And the majority concedes that North subsequently "backed down" on this request. Moreover, this alleged "interference" had no effect on the prosecution of the "prince" for bank fraud. Following a plea of guilty, the "prince" was imprisoned.[35]

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truthfully disclosed the associations and bias of Robinette, the information source North provided here. North's other reported statements, which the Committee did not ask him about during the hearings, appear to relate to the Neutrality Act issues and were not relevant to the FBI's investigation of Terrell. *Id.* North denied responsibility for "funding, arming, or administrating Contra programs." *Id.* at 3. North stated that he was not involved with any covert operations being run in the United States.*Id.*

Endnotes

1. Leiwant Dep., 6/2/87, at 12-14, 30.

2. Kellner Dep., 4/30//87, at 18-20; Gregorie Dep., 7/17/87, at 19, 20; Barnett Dep., 7/17/87, at 38-42; Scharf 7/17/87, at 15-17; Feldman Dep., 4/30/87, at 68-70.

3. Leiwant Dep., 6/2/87, at 11, 39

4. Jensen Dep., 7/6/87, at 58, 59; Trott Dep., 7/2/87, at 9; Richard Dep., 8/1/87, at 92, 93.

5. Leiwant Dep., 6/2/87, at 13.

6. Leiwant Dep., 6/2/87, at 30, 31.

7. Leiwant Dep., 6/2/87, at 44, 45.

8. Leiwant Dep., 6/2/87, at 29.

9. Leiwant Dep., 6/2/87, at 33-36.

10. Feldman Dep., 4/30/87, at 5, 6, 10.

11. Leiwant Dep., 6/2/87, at 26-32.

12. Leiwant Dep., 6/2/87, at 26, 27.

13. Feldman Dep., 4/30/87, at 68.

14. Feldman Dep., 4/30/87, at 10, 17, 18.

15. Currier Dep., 5/5/87, at 13, 14.

16. Kiszynski Dep., 5/5/87, at 12.

17. Feldman 4/30/87, at 37, 38.

18. Gregorie Dep., 7/17/87, at 31-33; Feldman Dep., 4/30/87, at 81-83; Kellner Dep., 4/30/87, at 46.

19. Kellner Dep., 4/30/87, at 117, 118; Gregorie Dep., 7/17/87, at 39, 42, 44.

20. See Memorandum from William Webster to Mr. Clark, October 31, 1986, regarding Southern Air Transport, cited at Meese Test., *Hearings*, 100-9, 7/28/87, at 274.

21. Meese Test., *Hearings*, 100-9, 7/28/87, at 237-274.

22. Majority Report, typescript, Chapter 5, at 44.

23. FBI file 246-967, p. 2 of 6/11/86 WFO teletype to FBI Director.

24. See the testimony of Glenn Robinette, Robinette Test., *Hearings*, 100-6, 6/23/87, at 1-52, passim.; North Test., *Hearings*, 100-7, Vol. I, 7/8/87, at 126-32.

25. Majority Report typescript at 47, Ch. 5.

26. Revell Dep., 7/15/87, at 25-26.

27. Revell Dep., 7/15/87, at 26, 31.

28. Revell Dep., 7/15/87, at 26.

29. Robinette Dep., 11/5/87, at 33.

30. Robinette Dep., 11/5/87, at 33-34.

31. Richard Dep., 8/19/87, at 130.

32. North PROF note to Poindexter, 9/17/86.

33. North PROF note to Poindexter, 9/17/86, Ch. 5, at 33.

34. FBI Interview Memorandum, 7/18/85, Ex. OLN-264, North Test. *Hearings*, 100-7, Part II.

35. Memorandum of Interview of Nicholas Harbist, 5/22/87.

Part VI

Putting Congress' House in Order

Chapter 13
The Need To Patch Leaks

Throughout the majority report, much is made of the Administration's concern for secrecy. That concern is portrayed almost exclusively, if not exclusively, as the desire of some lawbreakers to cover the tracks of their misdeeds. We agree that the National Security Council staff, under Admiral Poindexter, let its concern over secrecy go too far. We should not be so deceived by self-righteousness, however, that we dismiss the Admiral's concern as if it had no serious basis. Our national security, like it or not, does depend on many occasions on our ability to protect secrets. It is easy to dismiss the specific Iran arms sales decisions about executive branch compartmentalization, and about withholding information from Congress for almost a year, as having been excessive. Everyone on these Committees would agree with that conclusion. But unless we can understand the real problems that led the NSC staff to its decision, future Administrations will once again be faced with an unpalatable choice between excessive secrecy, risking disclosure or foregoing what might be a worthwhile operation.

Time after time over the past several years, extremely sensitive classified information has been revealed in the media. Predictably, both Congress and the Administration have blamed each other. In fact, both are culpable. It is important for these Committees to recognize this truth forthrightly. As Secretary Shultz said, quoting Bryce Harlow, "trust is the coin of the realm." [1] But trust has to be mutual. Some people on these Committees seem to want to bring criminal prosecutions against former Administration officials for not speaking candidly to Congress. It is true that the business of government requires the Administration to be considered trustworthy by Congress. But so too must Congress prove itself trustworthy to the Administration.

We do not mean, by our focus on congressional leaks, to suggest that we turn our eyes from the same problem in the executive branch. Executive branch leaks are every bit as serious as legislative branch ones. But as long as there is a consensus on this point, we do not feel a need to dwell on it here. At the end of this chapter, we will recommend legislation to help address the issue of executive branch leaks along with our suggestions for the legislative branch.

There is much less consensus in Congress, however, about leaks from the legislative branch. Those problems are real. As Representative Hyde wrote in a recent article, the fact that the executive branch leaks more, does little to get Congress off the hook.

> *Proven* Congressional transgressions admittedly are relatively rare, but so are proven executive-branch leaks. In truth, only a handful of leaks ever have been definitively traced to their source, so lack of proof establishes nothing. A partial Senate Intelligence Committee study often quoted by Mr. Beilenson reportedly found that journalists referenced congressional sources only 8–9 percent of the time, but cited Reagan Administration officials 66 percent of the time. Reporters may not be entirely candid about their sources. But generously assuming that Congress has 2,500 people with clearances as opposed to 2.2 million in the executive branch and the military, reliance on the Senate study forces us to conclude that Congress maintains just over 0.1 percent the number of executive branch clearances, but is responsible for 8–9 percent of the leaks on national security issues. Specifically, on average, a cleared person in Congress is 60 times more likely than his counterparts to engage in unauthorized disclosures.[2]

We believe that these problems—rather than a desire to cover up a supposed lawlessness whose existence we do not concede—contributed significantly to the Administration's posture in 1985–86.

Protecting Secrecy in the Early Congress

To put the issue in perspective, it is worthwhile to consider how the country's Founders dealt with the problem. Those hardheaded realists understood that breaches of security during that perilous revolutionary period could mean the difference between life and death. Consequently, only five members of the Second Continental Congress sat on the Committee of Secret Correspondence, the foreign intelligence directorate that was mentioned in our earlier historical chapter.

The Continental Congress was especially careful about protecting sources and methods. For example, the names of those employed by the Secret Correspondence Committee were kept secret, as were the names of those with whom it corresponded. Even then, there was concern about Congress keeping a secret. As a result, when the Committee learned that France would covertly supply arms, munitions and money to the revolution, Ben Franklin and another Committee member, Robert Morris, stated: "We agree in opinion that it is our indispensable duty to keep it a secret, even from Congress. . . . We find, by fatal experience, the Congress consists of too many members to keep secrets."*

To underscore the importance of protecting sensitive information, the Continental Congress on November 9, 1775, adopted the following oath of secrecy which should still be in effect today:

> Resolved That every member of this Congress considers himself under the ties of virtue, honour and love of his country, not to divulge, directly or indirectly, any matter or thing agitated or debated in Congress before the same shall have been determined, without the leave of the Congress, nor any matter or thing determined in Congress, which a majority of the Congress shall order to be kept secret. And that if any member shall violate this agreement, he shall be expelled this Congress, and deemed an enemy to the liberties of America, and liable to be treated as such, and that every member signify his consent to this agreement by signing the same.[3]

This oath was not taken lightly and no less a revolutionary figure than Thomas Paine, the author of "Common Sense," was fired as an employee of the Continental Congress for disclosing information regarding France's covert assistance to the American Revolution. Interestingly, Congress then resorted to its own covert action and passed a blatantly false resolution repudiating Paine's disclosure.[4] Obviously, the Founding Fathers realized that there are some circumstances when a well-intentioned "noble lie," as Plato put it, is a necessary alternative to the harsh consequences of the truth. They also believed in punishing leakers, a practice their modern counterparts in both the executive and legislative branches need to emulate more consistently.

Let us move forward in history now, to the early years of the Constitution. President Washington learned quickly that once information is shared with Congress, it is up to Congress—often the opposition party in Congress—to decide when or how it will be made public.

> During the time the Federalists controlled the House, they enforced a rule that excluded the public during any debate concerning material sent to the House by the President "in confidence." After the Republicans gained control, they changed this rule to allow the majority to vote for public debate on confidential communications on an ad hoc basis. Soon thereafter, the House voted to lift an injunction of secrecy they had placed on some letters sent by the President "in confidence." A similar rebellion of sorts took place in the Senate after the Jay Treaty was conditionally ratified. The President wanted the treaty kept secret until all negotiations were complete. The Senate voted, however, to rescind its injunction of secrecy, although it continued to enjoin "Senators not to authorize or allow any copy [to be made] of the said communication . . . ." Both Senators Pierce Butler of South Carolina and Stevens T. Mason of Virginia smuggled copies out of the Senate chamber, apparently before the secrecy injunction was lifted, and on the same day that the Government planned to make the treaty public, the Republican Aurora beat it to the punch by printing an abstract of the terms.[5]

The Leaky 1970s

Some things never change and as we celebrate our constitution's bicentennial, Congress is still prone to unauthorized and sometimes damaging disclosures. The worst period in recent history was during the 1970s, when the legitimacy of the CIA and covert operations were under attack. What follows are some examples of alleged congressional leaks during that period. Rather than rely on classified material, we have chosen here to protect still secret information by relying on accounts from secondary sources. The inclusion of this material is not meant to confirm or deny the veracity of the specific disclosures alleged. We begin with a 1972 example from Arthur Maass' book, *Congress and the Common Good.*

> On April 25, 1972, Senator Mike Gravel (D. AK) asked unanimous consent to insert in the *Congressional Record* excerpts from a top-secret National Security memorandum. The 500-page document concerning policy options in the Vietnam War had been prepared for Richard Nixon in 1969 by the National Security Council staff under Henry A. Kissinger. The senator's normally routine request was blocked temporarily by minority whip Robert P. Griffin (R. MI). The Senate met on May 2 and 4 in closed executive sessions to consider Gravel's request, but no decision was

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*For an earlier discussion of this committee, including this quotation, see supra, ch. 3, p. 470.

> reached. Then on May 9, Gravel, without advance notice, read into the *Record*, during debate on the annual State Department authorization bill, excerpts from the memorandum dealing with proposals to mine North Vietnamese ports, an action that had been announced by the President on the previous day. Senator Griffin, who entered the chamber during Gravel's statement, criticized him for acting before the Senate had disposed of the question. The Senator responded: "I have an obligation to the American people . . . to let the American people have the information that he [Richard Nixon] has."
>
> Congressman Ron V. Dellums (D.CA) then obtained from Gravel a copy of the full document which he placed in the *Congressional Record* on May 11, by simply asking unanimous consent to extend his remarks in the *Record* without giving any hint of their contents.[6]

Maass' book followed this example with two others from the committees that investigated the CIA.

> In January 1976, the House Intelligence Committee, under Chairman Otis G. Pike (D. NY) sought to make public a report containing information that the White House considered to be top secret. The House intervened, voting 246 to 124 to block the committee from releasing its report until the President certified that it did not contain information that would adversely affect the nation's intelligence activities. Whereupon Daniel Schorr of CBS *News*, having obtained a copy of the report presumably from a House member or staffer, gave it to the *Village Voice*, which published it, thereby frustrating an overwhelming majority of the House. Schorr was subsequently fired by CBS and became a cult hero on the college lecture circuit, commanding top fees for one-night stands.
>
> . . . The Senate Intelligence Committee chairman, Frank Church (D. ID), went to the full Senate in November 1975 for approval of release of the committee's report on CIA involvement in assassination attempts against foreign leaders. The report included secret information that the President believed should not be made public. The Senate met in executive session, that is, secret session, and when considerable opposition to release of the report developed, more opposition than Church had anticipated, he and the Democratic majority adjourned the session without a vote, and the committee released the report on its own authority.[7]

It is clear that leaks during this period were often motivated by an animus toward the CIA's mission in general or as a way of killing individual operations. The same Daniel Schorr who leaked the *Pentagon Papers* to the *Village Voice* wrote about leaks in a 1985 *Washington Post* article. "*The late Rep. Leo Ryan,*" Schorr wrote, "told me (in 1975) that he would condone such a leak if it was the only way to block an ill conceived operation." [8] In fact, wrote former Director of Central Intelligence William Colby, "every new project subjected to this procedure [informing eight congressional committees] leaked, and the 'covert' part of CIA's covert action seemed almost gone." [9]

The Still Leaky Congress During the Reagan Years

By the late 1970s, the House and Senate had formed intelligence committees, reducing the number of committees to which intelligence agencies had to report. That clearly improved the situation, but it did not cure all problems. Senator Joseph Biden, then a member of the Select Committee on Intelligence, sounded a bit like the late Leo Ryan in a 1986 Brit Hume article from *The New Republic*. Biden reportedly said he had "twice threatened to go public with covert action plans by the Reagan administration that were harebrained."[10]

In 1984, according to an article by Robert Caldwell, CIA officials briefed the same Senate Select Committee on Intelligence about information indicating that the Government of India was considering a preemptive strike against Pakistan's nuclear facility. When word of the briefing leaked, the operation was halted. According to Caldwell, the leak showed India that it had a security breach at a high level. The breach was discovered and a French intelligence ring was put out of business.[11]

The Senate Select Committee on Intelligence was one of the bodies to which the President would have had to report the Iran arms sales. Of course the President could have limited the report to the committee chairmen and ranking minority members as well as the party leaders of the House of Representatives and Senate. The problem with this scenario is that some senior members of the committee have been suspected of leaking, as was discussed in the Committees' hearings.[12] The House committee has also been the source of some damaging disclosures. Bob Woodward's book, *Veil*, describes one incident that allegedly happened after members of the committee had sent a secret letter to President Reagan to protest an operation about which Director Casey had just briefed them.

> Representative Clement J. Zablocki, the chairman of the House Foreign Affairs Committee and a member of the House Intelligence Committee, had reviewed the . . . finding and the letter to Reagan. The sixty-nine-year-old lawmaker leaked

> to *Newsweek* that the letter to Reagan about the yet unnamed operation in Africa was a plan to topple Qaddafi . . . .
>
> *Newsweek* reporters went back to House Foreign Affairs Chairman Zablocki after the Libya plan was denied. Zablocki went to House staff members, tipping them that he had been a source for *Newsweek*. He was set straight, but the House Intelligence Committee chairman, Edward Boland, decided to take no action against Zablocki, since leaks were epidemic.[13]

Complaints and investigations about subsequent incidents involving the House committee so far remain at the informal stage.

To complete this picture of the world about which Poindexter had to make judgments: on November 3, 1985—in the weeks just before the November arms transaction—a *Washington Post* article by Bob Woodward broke a story about a "CIA Anti-Qadhafi Plan Backed."[14] Director Casey responded to this article with a blistering letter to the President about executive and legislative branch leaks. *The Washingtonian* magazine, accurately in our view, linked the atmosphere in the White House immediately after this leak to the decision not to notify Congress about the Iran arms sale.[15]

It may be that not all these reported details about named Members of Congress are true. True or not, they fit in with a real pattern. As such, they form part of the background Director Casey and Admiral Poindexter had to consider in November 1985. It seems clear, with 20/20 hindsight, that Casey and Poindexter overreacted. They may even have used the *Post* story as a convenient peg in their ongoing battle over secrecy with Secretary Shultz and others. But even if they did overreact, it is irresponsible to dismiss their fears as being simply irrational, power hungry or nefarious.

Yes, some foreigners—Ghorbanifar, the Israelis, Khashoggi, the first and second Iranian channels—did have to know what was going on. That is the nature of any secret international dealing. The issue is how much should be told to anyone who did not have a need to know to complete the operation successfully. The simple fact is, we had no way of knowing whether our sources in Iran were endangering their lives by dealing with us. Judging from the thousands executed in the early days of the Khomeini regime and the recent execution of Mehdi Hashemi, the threat seemed real enough.[16] Nor could we know whether the slightest misstep might get the hostages killed. Certainly, such threats against the hostages lives have been a part of the hostage takers' media events, and Kilburn's death was real. Given the track record, no one in Congress or the executive branch can afford to be smug about these concerns. Trust is a two-way street, and each end of Pennsylvania Avenue had good reasons to doubt the other.

Problems In These Committees

Past leaks contributed to decisions that in turn led to these investigations. The leaks did not stop, however, when the committees started to work. The Committees began with every good intention. Recognizing that it was dealing with highly sensitive information, the leadership made a concerted effort to prevent leaks. The complexity and short time frame of the probe, however, led to a decision not to compartmentalize sensitive information. Consequently, everyone on the joint staff of some 165 people had multi-compartmented clearances and access to the highest levels of classified material. The same access held true, of course, for the 26 members of the two Select Committees. Given the number of people with access to these secrets, it is surprising there were not more revelations.

We are reluctant to identify leaks with too much precision, because confirmation may help adversaries sort out the ones we consider harmful. Suffice it to say that the types of leaks included misleading the media on the nature of a witness' secret testimony several days before he appeared as a public witness as well as revealing intelligence collection methods, the identities of undercover personnel, and the names of a number of countries which, in one way or another, were trying circumspectly to be helpful to the United States in a variety of foreign policy undertakings. Needless to say, these disclosures, and others, are causing these and other countries to have serious reservations about future cooperation with the United States. That turn of events should give us real pause. This is a highly interdependent world. It no longer is possible for the United States to go it alone, whether to combat terrorism or contain Soviet/Cuban expansionism in Central America.

Consider one example. On Friday, May 29, the Committees took testimony in closed executive session from "Tomas Castillo," the former CIA station chief in a Central American country. At the end of Castillo's testimony, the following colloquy took place:

> Mr. RUDMAN. I just want to make one comment. It is my understanding that the [declassified] transcript is going to be made available sometime tomorrow to the press.
>
> Chairman HAMILTON. That is correct.
>
> Mr. RUDMAN. It is also my understanding that under the rules of Congress and the Intelligence Committees that it would be inappropriate for any members or staff or anyone else to comment

> on these proceedings without specific permission in some way from the chairman.
>
> Chairman HAMILTON. That is correct. Under the rules of the House Committee at least, you cannot release classified information without a vote of the committee and in the Senate my understanding is it is a similar procedure.
>
> Chairman INOUYE. That is correct.[17]

Despite these explicit statements, articles appeared in May 30 newspapers with May 29 datelines accurately summarizing the testimony, and quoting named members of the Committees giving broad characterizations of the testimony.* The declassified transcripts were not available until Sunday night, May 31. There were no Committee votes in the interim.

Some of these revelations by staff and Members, as well as current and former Administration officials, occurred during intense questioning and cross examination of witnesses and appeared to be inadvertent. Such mistakes, however, suggest in retrospect that this nation's security interests would have been much better served had we decided to take more testimony in closed session. Potentially damaging slips of the tongue could then have been redacted before a transcript was made available to the public.

As a consequence of this probe, and that of Judge Walsh, this nation's intelligence community could be facing the same situation it confronted more than a decade ago after the Church and Pike Committees investigations. Leaks from those inquiries seriously debilitated our overall intelligence capabilities and it took us over a decade to repair the damage. A rerun of that sorry chapter would have grave national security implications, coming on the heels of a series of very damaging spy scandals epitomized by the Walker family case.

What happened to Castillo's testimony, which was open to all Committee members and many staff, contrasts sharply with the executive session deposition of Admiral Poindexter on May 2, 1987. The two select Committees recognized that the Admiral's testimony on the diversion of funds was the pivotal, and potentially most explosive political question of this whole investigation. As a result, extraordinary steps were taken to protect the information. Specifically, only three staff attorneys and no Members of either Committee participated in the secret questioning. The success of these procedures speaks volumes on how to protect secrets. In the final analysis, as Chairman Hamilton noted in a perceptive article on protecting secrets that appeared in the September 4, 1985 *Congressional Record,* "Leaks are inevitable when so many people handle secrets."[18] The most effective way of ensuring secrecy is to restrict access to sensitive information to just a handful of responsible people.

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*See, for example, R.A. Zaldivar and Charles Green, "CIA station chief wasn't renegade, congressmen say," *The Miami Herald,* May 30, 1987, p. 16A; Fox Butterfield, "Ex-C.I.A. Officer Tells of Orders to Assist Contras," *The New York Times,* May 30, 1987, p. 7; *Associated Press,* "Contra role told by ex-CIA agent," *Chicago Tribune,* May 30, 1987, p. 5. Interestingly, *The Washington Post,* the same newspaper that publishes Bob Woodward's intelligence disclosures, distinguished itself from the others this day by refusing to publish certain classified information. The *Post* also gave no details about Castillo's testimony and quoted Sen. Rudman refusing to give information. Dan Morgan, "Higher-Level CIA Officials May Be Subpoenaed on Contra Aid," *The Washington Post,* May 30, 1987, p. A9.

Endnotes

1. Shultz Test., *Hearings*, 100-9, 7/23/87, at 52.

2. Henry J. Hyde, "How To Reduce The Leaks, Case for a Joint Intelligence Committee," The Washington Times, October 12, 1987, pp. D1, D4.

3. U.S. Central Intelligence Agency Bicentennial Publication, Intelligence in the War of Independence, published by the Nathan Hale Institute (1976), p. 14.

4. Edward F. Sayle, The Historical Underpinnings of the U.S. Intelligence Community, reprinted by the Intelligence Publishing Groups Inc., from 1 Journal of Intelligence and Counterintelligence (1986).

5. Sofaer, War, Foreign Affairs and Constitutional Power at 96-97.

6. Arthur Maass, Congress and the Common Good (1983), p. 241.

7. *Id.* at 243.

8. Daniel Schorr, Cloak and Dagger Relics, The Washington Post, November 14, 1985, A23.

9. William Colby, Honorable Men (1978), p. 423.

10. Brit Hume, Mighty Mouth, The New Republic, September 1, 1986, p. 20..

11. Robert J. Caldwell, "Button the loose lips in Congress," The San Diego Union, July 26, 1987, pp. 1,8.

12. Meese Test., *Hearings*, 100-9, 7/29/87, at 350-51.

13. Bob Woodward, Veil: The Secret Wars of the CIA 1981-1987 (1987), pp. 158, 160.

14. Bob Woodward, CIA Anti-Qadhafi Plan Backed, The Washington Post, November 3, 1985, pp. A1, A19.

15. Barbara Matusow, "Woodward Strikes Again," The Washingtonian (Sept. 1987), pp. 114, 234.

16. See Chapter 8 of the Minority Report, "The Iran Initiative," at p. 520.

17. Castillo testimony, May 29, pp. 85-86.

18. Hon. Lee H. Hamilton, Protecting Secrets, Congressional Record, September 4, 1985, pp. E3855-56.

Part VII
Recommendations

Chapter 14

Recommendations

The majority report reaches the conclusion, accurately in our opinion, that the underlying cause of the Iran-Contra Affair had to do with people rather than with laws.* Despite this laudable premise, the majority goes on to offer no fewer than 27 recommendations, most involving legislation and several of them multifaceted. Some of the recommendations unfortunately betray Congress' role in the legislative-executive branch struggle by proposing needlessly detailed rules for the organization of the executive branch. At the same time, the majority recommendations barely touch the problem of leaks, and say nothing at all, to no one's surprise, about Congress' misuse of massive continuing appropriations resolutions to conduct foreign policy.

We do not intend here to give a detailed critique of the majority recommendations. We do believe that requiring the President to notify Congress of all covert operations within 48 hours, without any exceptions, would be both unconstitutional and unwise.** Many of the remaining recommendations seem to us to be unconscionably meddlesome. No good reasons are offered for prohibiting military officers, such as General Powell, from being National Security Adviser. No good reasons are offered for having the National Security Council produce regular staff rosters for Congress. And so forth, and so on. It all strikes as more of the same: an attempt to achieve grand policy results by picking away at the details.

In the spirit of offering recommendations, however, we are pleased to present some of our own.

Recommendation 1: Joint Intelligence Committee

Congress should replace its Senate and House Select Committees on Intelligence with a joint committee.

Congress has realized that limiting the number of people with access to sensitive information can help protect the information's security. The House and Senate took worthwhile first steps to limit the number of Members and staff engaged in intelligence oversight by establishing Select Committees on Intelligence. Unfortunately, as we have seen, security still is not tight enough. The time has now come, therefore, for taking the next logical steps.

Given the national security stakes involved, Congress and the Administration must find a remedy for restoring mutual trust. One major step in that direction can be taken by merging the existing House and Senate intelligence committees into a joint committee, along the lines of legislation (H.J. Res. 48) sponsored by Representative Henry Hyde and a bipartisan group of 135 cosponsors (see Appendix C). Such a committee need not have the 32 Members (plus four ex-officio) and 55 staff now needed for two separate committees. Fewer Members, supported by a small staff of apolitical professionals, could make up the single committee. In recognition of political reality, the majority-party membership from each House would have a one vote edge.

A joint intelligence panel would drastically diminish the opportunities for partisan posturing and substantially reduce the number of individuals with access to classified and sensitive information. This would not only minimize the risk of damaging unauthorized disclosures but would also significantly increase the likelihood of identifying leak sources—something that rarely occurs now because so many people are in the "intelligence information loop." Furthermore, with the possibility of discovery so much greater, potential leakers would be strongly deterred from unauthorized disclosures.

To achieve both efficiency and secrecy in congressional consideration of intelligence matters, a Joint Intelligence Committee must have legislative as well as oversight jurisdiction. Otherwise, the two Houses would not give the Joint Committee the deference the two existing intelligence committees enjoy. Neither would the intelligence agencies have the budget-based incentives to cooperate with the Joint Committee as they have now with the two select committees. Inadequate jurisdiction might also prompt the various committees in each House with historical interests in intelligence to reassert themselves. That could trigger increased fractionalization of the congressional oversight process, with the concomitant proliferation within the Congress of access to sensitive intelligence information.

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* See Chapter 8 in the Minority Report at 532-536.

** See the Minority Report, Chapter 4 at 477-478, and Chapter 9 at 543-545.

Recommendation 2: Oath and Strict Penalties for Congress.

To improve security, the Joint Intelligence Committee (or the present House and Senate committees) should adopt a secrecy oath with stiff penalties for its violation.

Creating a joint committee will not by itself guarantee the security of intelligence information. Also essential is committee self-discipline. Earlier, we pointed out how the reputations of the Senate and House Intelligence Committees have been sullied by leaks from Members or staff. As the importance of congressional oversight, and the reputation for leaking, both grow, foreign intelligence agencies are discouraged from unguarded cooperation with the United States. Change is therefore urgent both to stanch the flow of leaks and to symbolize to foreign countries that Congress is serious about preserving the confidentiality of secrets.

One significant change that would help further both goals would be to require an oath of secrecy for all Members and staff of the intelligence committees. Such an oath would not be an American novelty. As we have already noted, the Continental Congress' Committee on Secret Correspondence required all of its members and employees to pledge not to divulge, directly or indirectly, any information that required secrecy.

The proposed oath should read: "I do solemnly swear (or affirm) that I will not directly or indirectly disclose to any unauthorized person any information received in the course of my duties on the [Senate, House or Joint] Intelligence Committee except with the formal approval of the Committee or Congress."

The Committee Rules should be amended to compel permanent expulsion from the committee of any member or staff person who violates his or her oath. While proceedings remain pending, the accused would be denied access to classified information. The rules of the House and Senate should also be amended to provide that the Intelligence Committee would be authorized to refer cases involving the unauthorized disclosure of classified information to the Ethics Committees. The rules should make it clear that the Ethics Committees may recommend appropriate sanctions, up to and including expulsion from Congress.

This approach is well within the Constitution's expulsion power and the power of each House to set rules for its own proceedings. The power of each House of Congress to expel Members for misbehavior by two-thirds vote is virtually uncircumscribed.[1] Historically, fifteen Senators and four Representatives have been expelled. Fourteen of the Senators were expelled for supporting the Confederate secession. The fifteenth, Senator Blount, was for conspiring with Indian tribes to attack Spanish Florida and Louisiana. The House and Senate also have considered and refused expulsion on twenty-four occasions for charges [illegible]ied as corruption, disloyalty, Mormonism, treasonable utterances, dueling, and attacking other Members of Congress. Expulsion decisions of Congress are probably beyond judicial review.[2]

Any set of recommendations that limits itself to Congress would not be adequate to respond to the problem of leaks. Therefore, we recommend a more balanced approach that would stiffen the penalties for others who participate in this activity.

Recommendation 3: Strengthening Sanctions

Sanctions against disclosing national security secrets or classified information should be strengthened.

Current federal law contains many provisions prohibiting the disclosure of classified information, but each of the existing provisions has loopholes or other difficulties that make them hard to apply. The section that covers the broadest spectrum of information, "classified information," only prohibits knowing, unauthorized communication to a foreign agent or member of a specified Communist organization.[3]

Another set of provisions contains no such limit on the recipient of the information, but applies only to information related to the national defense.[4] For some specified information, unauthorized disclosure or transmission is criminal under any circumstances.[5] The transmission of other "information relating to the national defense" to an unauthorized person is also illegal if a person has reason to believe the information would be used to injure the United States or to benefit a foreign nation. The problem with these provisions is that they cover only "information relating to the national defense" rather than the full range of national security information whose secrecy the government has a legitimate reason to protect.[6]

A third set of provisions in current law is limited to nuclear weapons production.[7] A fourth is limited to information about ciphers or communications intelligence.[8] This is the law that the National Security Agency Director, General William E. Odom, believes should be applied more vigorously against both federal employees and the press.*

---

* The following is quoted from Molly Moore, "Prosecution of Media for Leaks Urged," The Washington Post, Sept. 3, 1987, p. A4:

"I don't want to blame any particular area for leaking," said Odom, who added, "There's leaking from Congress . . . there's more leaking in the administration because it's bigger. I'm just stuck with the consequences of it.

Leaks have damaged the [communications intelligence] system more in the past three to four years than in a long, long time." . . .

Odom said he has encouraged the administration to use an obscure law that prohibits disclosures of "communications intelligence." Odom said he has referred several cases involving news leaks to the Justice Department since 1985 but said the department has declined to prosecute any of them. The department said it has not prosecuted any so far. . . .

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Finally, a fifth provision—also limited in the information it protects—makes illegal the disclosure of agents' identities. This law is also restricted to disclosures by someone who (a) has authorized access to the identity from classified information or (b) is engaged in a "pattern of activities intended to identify and expose covert agents" with reason to believe the publicity would impair the foreign intelligence activities of the United States.[9] The latter limitation means that the agent disclosure law does not cover most normal press disclosures, such as the ones we mentioned earlier about reports based on these committees' work, because they are not normally part of a pattern or practice of identifying covert agents.

In order to close these loopholes, Rep. Bill McCollum has introduced a bill (H.R. 3066) co-sponsored by all the other Republican members of the House Iran Committee. The bill is limited to current and past federal employees in any branch of government. For these people, the bill would make it a felony knowingly to disclose classified information or material (not just specific national defense information) to any unauthorized person, whatever the intent.

Another approach that would supplement the McCollum bill would be to introduce substantial civil penalties for the knowing disclosure of classified information to any unauthorized person. The penalties might range from administrative censure to a permanent ban on federal employment and a fine of $10,000. The advantage of giving the Justice Department the option of using a civil statute would be (a) that the standard for proof would be the preponderance of evidence rather than proof beyond a reasonable doubt and (b) the law could stipulate that contested violations should be heard in secret, without a jury. These procedures should not encounter constitutional difficulties in light of the Supreme Court's broad endorsement of controls on the disclosure of classified information in *Snepp* v. *U.S.*[10]

Recommendation 4: Gang of Four

Permit the President to notify the "Gang of Four" instead of the "Gang of Eight" in special circumstances.

Representative Broomfield has introduced a bill that, among other things, would permit the President on extremely sensitive matters to notify only the Speaker of the House, House Minority Leader, Senate Majority Leader and Senate Minority Leader. Under current law, limited notification means notification of these four plus the chairmen and ranking minority members of the two intelligence committees. On the principal that notifying fewer people is better in extremely sensistive situations, we would be inclined to support legislation along these lines that would ratify what has already come to be an informal occasional practice.

Recommendation 5: Restore Presidential Power to Withstand Foreign Policy by Continuing Resolution

Require Congress to divide continuing resolutions into separate appropriations bills and give the President an item veto for foreign policy limitation amendments on appropriations bills.

The way Congress made foreign policy through the Boland Amendment is all too normal a way of doing business. Congress uses end of the year continuing resolutions to force its way on large matters and small, presenting the President with a package that forces him to choose between closing down the Government or capitulating. Congress should give the President an opportunity to address the major differences between himself and the Congress cleanly, instead of combining them with unrelated subjects. To restore the Presidency to the position it held just a few Administrations ago, Congress should exercise the self-discipline to split continuing resolutions into separate appropriation bills and present each of them individually to the President for his signature or veto. Even better would be a line-item veto that would permit the President to force Congress to an override vote without jeopardizing funding for the whole government.

"Generally, when I'm with a group of journalists, I can usually see two or three people who fall in the category of those who probably could be successfully prosecuted," Odom told the reporters.

The following material, from the same press briefing, is from Norman Black, "Gen. Odom blames leaks for 'deadly' intelligence loss," Associated Press dispatch published in The Washington Times, Sept. 3, 1987, pp. 1, 12:

Asked to provide examples, Gen. Odom said he didn't want "to get specific right now and compound the things, but a number of sources have dried up in some areas which you are all familiar with, in the past year or two.

A number of years ago there was a case that had to do with a Damascus communication. . . . It was a leak. It attributed this thing to an intercept. And the source dried up immediately," Gen. Odom said.

Asked then about Libya, he replied, "Libya, sure. Just deadly losses."

Endnotes

1. See In re Chapman, 166 U.S. 661, 669-670 (1897).
2. See *Powell* v. *McCormack*, 395 U.S. 486, 507 n. 27, 548-549 (1969).
3. 50 U.S.C. 783.
4. 18 U.S.C. 793 (d) and (e) and 794.
5. See *New York Times* v. *Sullivan*, 403 U.S. 713, 737-40 (1971); *U.S.* v. *Morison*, 604 F. Supp. 655 (1985).
6. *Gorin* v. *U.S.*, 312 U.S. 19, 28 (1941); *U.S.* v. *Dedeyan*, 584 F. 2d 36 (4th Cir., 1978).
7. 18 U.S.C. 2274, 2277.
8. 18 U.S.C. 798.
9. 50 U.S.C. 421.
10. 444 U.S. 507 (1980).

Part VIII
Appendixes

APPENDIX A

THE RAND
CORPORATION
1700 Main Street PO Box 2138
Santa Monica CA 90406-2138

September 25, 1987

Representative Lee H. Hamilton
Chairman
House Select Committee to Investigate Covert Arms
  Transactions with Iran
United States Capitol
Washington, D.C. 20515

Representative Dick Cheney
Ranking Minority Member
House Select Committee to Investigate Covert Arms
  Transactions with Iran
United States Capitol
Washington, D.C. 20515

To the Chairman and Ranking Minority Member of the Committee:

The enclosure to this letter, entitled "Reporting Obligations and Funding Restrictions Affecting Intelligence Departments, Agencies and Entities of the United States," is submitted to your Committee through the U.S. Senate Select Committee on Intelligence. I have prepared the enclosed statement in reply to your letter of September 3, 1987 (Enclosure 1).

That letter requested my observations and recollections of the legislative history of intelligence law that:

- "might be helpful to the Committee in its evaluation of whether any laws were violated by members of the executive branch in the Iran/Contra affair"; and/or

- "relate to the concept of an 'intelligence agency' or 'intelligence entity' as traditionally understood by Congress or the Chief Executive."

In preparing a response to your letter, I have reviewed my records pertaining to the legislative history of both enacted intelligence legislation and executive orders for the period 1974-1984. Based upon this review and my experience as the longest continuously-serving consultant to the Senate Select Committee on Intelligence in the period 1976-1984, I have prepared Enclosure 2.

My review of pertinent records brought to my attention a related issue: whether authorizations for covert activities to be conducted under the direction of the National Security Council should be subject to a preceding legal opinion respecting the conformity of the proposed activity to United States law.

In 1974 I reviewed the legal authority for the conduct and control of foreign intelligence activities of the United States, under sponsorship of the Intelligence Panel of the Murphy Commission, with the cooperation of the NSC staff and general counsels of the various intelligence agencies.

At that time I posed for the Commission's Intelligence Panel a set of issues relating to legal authority and accountability. In particular, I invited the Commission to consider whether the National Security Act of 1947 should be amended to require, before NSC authorization of covert activities, an opinion as to the activity's legality under the laws of the United States and obligations of the United States under international law

Enclosure 3 provides a copy of the Murphy Commission Intelligence Issues Paper, "Legal Authority for the Conduct and Control of Foreign Intelligence Activities," as revised on November 22, 1974. See in particular pages 18 to 22, Issue #10 at pp. 21-22, and Appendix 2.

The Chairman of the Intelligence Panel and the Commission, Ambassador Robert D. Murphy, did not favor my proposal to establish a Legal Adviser to the National Security Council, both because the Attorney General was the principal legal adviser to the President and because of possible impairment of presidential freedom of action respecting U.S. covert activities.

The National Security Council is by statute responsible for the direction of CIA's performance of "such other functions and duties related to intelligence...." Had a system of mandated legal review and an NSC Legal Adviser been established in the 1970s, it is entirely possible that the need for your Select Committee would not have arisen.

I am pleased to learn that the present Special Assistant to the President for National Security Affairs, Mr. Frank Carlucci, has established the position of Legal Adviser to the NSC in January 1987. This initiative assures the availability to the NSC of a legal officer. It does not by itself mandate legal review of proposed covert activities prior to Presidential finding and NSC direction.

Intelligence activities of the United States can and must be conducted under the rule of law in a democratic society. I trust that the enclosed review of intelligence laws and Congressional oversight practices will assist your Committee as it completes a difficult task.

Respectfully submitted,

William R. Harris

William R. Harris
16641 Marquez Terrace
Pacific Palisades, CA. 90272

Enclosure 1, Letter from Rep. Hamilton and Rep. Cheney to William R. Harris, Sep. 3, 1987.

Enclosure 2, William R. Harris, "Reporting Obligations and Funding Restrictions Affecting Intelligence Departments, Agencies, and Entities of the U.S." Sep. 25, 1987.

Enclosure 3, William R. Harris, "Legal Authority for the Conduct and Control of Foreign Intelligence Activities," Issues Paper, Commission on the Organization of the Government for the Conduct of Foreign Policy, November 22, 1974.

THE RAND
CORPORATION
1700 Main Street PO Box 2138
Santa Monica CA 90406-2138

September 25, 1987

Senator David L. Boren
Chairman
Senate Select Committee on Intelligence
SH-211 Hart Senate Office Building
Washington, D.C. 20510

Senator William S. Cohen
Vice Chairman
Senate Select Committee on Intelligence
SH-211 Hart Senate Office Building
Washington, D.C. 20510

To the Chairman and Vice Chairman of the
Senate Select Committee on Intelligence:

By letter of September 3, 1987, the Chairman and Ranking Minority Member of the House Select Committee to Investigate Covert Arms Transactions with Iran requested my assistance regarding:

- Legislative history of intelligence laws that might "be helpful to the Committee in its evaluation of whether any laws were violated by members of the executive branch in the Iran/Contra affair."
- "[A]ny observations or recollections that relate to the concept of an 'intelligence agency' or 'intelligence entity' as traditionally understood by Congress or the Chief Executive..."

Between January 1976 and December 1984 I served as a consultant to the Senate Select Committee on Intelligence and its predecessor committee. In that capacity, I reviewed and sometimes revised drafts of the oversight charter of the Committee (S. Res. 400 in 1976) and intelligence legislation including the Intelligence Oversight Act of 1980 (50 U.S.C. sec. 413). Drafts of legislation were prepared in unclassified form, but as work product of the Intelligence Committee. Accordingly, I am transmitting to you my response to the House Committee in conformity with my secrecy agreements with your Committee executed in 1977 and 1984, and in accordance with Committee Rules.

Please advise me if and when you release the accompanying letter to the House Select Committee to Investigate Covert Arms Transactions with Iran.

Respectfully submitted,
William R. Harris

William R. Harris
16641 Marquez Terrace
Pacific Palisades, CA. 90272

Encl: Ltr. to Rep. Hamilton and Rep. Cheney w/ Encl.1, 2, and 3.

THOMAS S. FOLEY WASHINGTON
PETER W. RODINO JR. NEW JERSEY
JACK BROOKS TEXAS
LOUIS STOKES OHIO
LES ASPIN WISCONSIN
EDWARD P. BOLAND MASSACHUSETTS
ED JENKINS GEORGIA

JOHN W. NIELDS JR. CHIEF COUNSEL
W. NEIL EGGLESTON DEPUTY CHIEF COUNSEL
CASEY MILLER STAFF DIRECTOR

U.S. HOUSE OF REPRESENTATIVES
SELECT COMMITTEE TO INVESTIGATE
COVERT ARMS TRANSACTIONS WITH IRAN
UNITED STATES CAPITOL
WASHINGTON, DC 20515
(202) 225-7902

HENRY J. HYDE ILLINOIS
JIM COURTER NEW JERSEY
BILL McCOLLUM FLORIDA
MICHAEL DeWINE OHIO

THOMAS R. SMEETON MINORITY STAFF DIR
GEORGE VAN CLEVE CHIEF MINORITY COUN
RICHARD LEON DEPUTY CHIEF MINORITY COU

SEP 11 PM 2 04

September 3, 1987

Mr. William R. Harris
The Rand Corporation
1700 Main Street
Santa Monica, CA 90406-2138

Dear Mr. Harris:

We understand that you participated in the deliberations and forging of events that culminated in the 1980 Intelligence Oversight Act, as a consultant to the Senate Select Committee on Intelligence.

We further understand you played a role in the drafting of President Carter's Executive Order governing the intelligence community. We believe your expertise in these intelligence law matters might be helpful to the Committee in its evaluation of whether any laws were violated by members of the executive branch in the Iran/Contra affair.

In particular, we would be grateful for any observations or recollections that relate to the concept of an "intelligence agency" or "intelligence entity" as traditionally understood by Congress or the Chief Executive. A letter to the Committee addressing these and related issues regarding the history, intent, or scope of the IOA and President Carter's Executive Order would be much appreciated.

Sincerely,

Lee H. Hamilton

Dick Cheney
Dick Cheney

DC/ts

RAND-SANTA MONICA
PRESIDENT ky
SR. V. PRES.
CORP SEC
PAFO VP
APD/AC VP
NSRO VP ky
DRD VP
DRD OPNS
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PSD
SSD
PROG DIR
ICJ
DEVELOPMENT
RGI W. R. Harris

Enclosure 2.

REPORTING OBLIGATIONS AND FUNDING RESTRICTIONS AFFECTING INTELLIGENCE DEPARTMENTS, AGENCIES, AND ENTITIES OF THE UNITED STATES

Prepared Statement
of
William R. Harris
In reply to a request of the U.S. House Select Committee
to Investigate Covert Arms Transactions with Iran
September 25, 1987

The views expressed are those of the author in his individual capacity. They neither represent the U.S. Senate Select Committee on Intelligence nor The RAND Corporation, with regard to the issues considered.

REPORTING OBLIGATIONS AND FUNDING RESTRICTIONS AFFECTING INTELLIGENCE DEPARTMENTS, AGENCIES, AND ENTITIES OF THE U.S.

INCLUSION OF THE NATIONAL SECURITY COUNCIL AND STAFF WITHIN THE SCOPE OF CONGRESSIONAL INTELLIGENCE OVERSIGHT UNDER S. RES. 400 (1976), H. RES. 658 (1977), AND EXECUTIVE ORDER 12036 (1978).

The Senate established, by S. Res. 21, the Senate Select Committee on Government Operations with Respect to Intelligence Activities (the Church Committee) in January 1975. This Committee conconducted broad-ranging investigations and drafted proposed intelligence oversight legislation that resulted in establishment of the present Senate Select Committee on Intelligence in May 1976.

Preceding S. Res. 21, President Ford signed into law P.L. 93-559, including as Sec. 662 of the Foreign Assistance Act of 1961 [22 U.S.C. 2422] the Hughes-Ryan Amendment. This required a presidential finding ("important to the national security") preceding any expenditure of funds for covert operations of the Central Intelligence Agency. It did not specify any reporting duty of the NSC or its staff. It did require the President to report each "finding" to the "appropriate" committees of the Congress "in a timely fashion...."

This resulted in reporting of presidential findings to the full membership of the House and Senate Armed Services Committees, to the Defense Subcommittees of the Appropriations Committees, and to the House Foreign Affairs Committee and the Senate Foreign Relations Committee. [See Gary J. Schmitt, "Congressional Oversight of Intelligence," Spring 1985.] Subsequent to the establishment of the Senate and House Intelligence Committees in 1976 and 1977, respectively, the "appropriate" committees included more than 150 members.

My records indicate that in 1975, a staff attorney of the Senate Select Committee on Government Activities with Respect to Intelligence Activities, Ms. Martha Talley, prepared for the Committee a draft "Intelligence Oversight Act of 1975." The committee's draft legislation was not introduced in that year, but is indicative of the scope and intent of the oversight legislation that the Senate approved (S. Res. 400) the following year.

The draft Intelligence Oversight Act of 1975 contained both proposed amendments to Senate rules (sec. 4 through 10) and proposed legislation (sec. 11ff.). Proposed Section 6(a)(1)(B) [Sec. 3(a)(2) of S. Res. 400] provided jurisdiction over intelligence activities of all other departments and agencies of the Government...."

The scope of proposed legislative oversight reflected the experience of a committee responsible for investigating intelligence activities of the entire government. The committee did in fact investigate intelligence activities of the Postal Service, the Internal Revenue Service, and other agencies outside the intelligence community whose activities raised issues of legality or propriety.

The analysis of Section 6 prepared by Ms.Talley for the Committee in 1975 indicated:

> "The Committee would have oversight and legislative jurisdiction of intelligence activities engaged in by the following agencies, their successors, employees, subcontractors, and proprietaries:
>
> "...
>
> "7. National Security Council, and its subcommittees, panels and working groups with authority to deal with intelligence, counterintelligence, internal security, and related matters".

My records indicate that Senate Select Committee completed a revised Staff Draft S. Res. ___ on December 31, 1975, to establish a Senate Committee on Intelligence. Sec. 8 retained government-wide jurisdiction and proposed (per the suggestion of a Senator who served on the Joint Committee on Atomic Energy) a duty of "each department, agency, or instrumentality of the government" to keep the Committee "fully and currently informed with respect to all intelligence and counterintelligence policies, programs, and activities which are the responsibility of, or are planned, supervised, financed, or carried out by, such department, agency, or instrumentality...."

The "currently and fully informed" standard was derived from Section 202 of the Atomic Energy Act of 1946 [42 U.S.C. 2252].

In January 1976 the Office of the U.S. Senate Legislative Counsel prepared a redraft of S. __, titled the "Intelligence Oversight Act of 1976." Section 6(a)(1)(B) retained jurisdiction over the "intelligence activities of all other departments and agencies of the government...." This language was retained in Sec. 3(a) of S. Res. 400. Sec. 13, which, as later modified, became Sec. 11 of S. Res. 400, proposed a duty for the head of each department or agency of the United States to keep the Senate intelligence oversight committee -

> "fully and currently informed with respect to all intelligence activities which in any respect are the responsibility of or are planned, supervised, financed, or engaged in by such department or agency."

The above-quoted language, preserving the exact language of Sec. 11(a) of the draft Intelligence Oversight Act of 1975, appeared unworkable to representatives of intelligence agencies in early 1976. In early 1976, the Special Counsel to the Director of Central Intelligence, Mitchell Rogovin, proposed alternative reporting language in a meeting with William R. Harris, a Consultant to the Senate Committee. My records indicate that the Rogovin-Harris substitute read:

> "...it shall...be the duty of the head of each department and agency of the United States to keep the Committee on Intelligence Activities fully and currently informed with respect to intelligence activities which are the responsibility of such department or agency."

This language retained a reporting duty for each department or agency of the United States, without restriction to agencies of the intelligence community. It was later amended by Senatorial initiative to add the phrase "including any significant anticipated activities...." before its introduction on March 1, 1976 (with 19 co-sponsors) as S. Res. 400.

On April 9, 1976, the Senate Rules Committee favorably reported S. Res. 400, and on May 19, 1976, the Senate considered, amended and approved S. Res. 400 by a vote of 72 to 22.

> Sec. 11(a) provided: "It is the sense of the Senate that the head of each department and agency of the United States should keep the select committee fully and currently informed with respect to intelligence activities, including any significant anticipated activities, which are the responsibility of or engaged in by such department or agency;..."
>
> Sec. 14(a) defined "intelligence activities" to include intelligence, counterintelligence, covert or clandestine activities (without specific restriction to an intelligence agency's sponsorship), and internal security intelligence.
>
> Sec. 14(b) included in the definition of "department or agency" any federal organization, including any "committee, council, establishment, or office within the Federal Government."
>
> [For parallel definitions adopted by the House Permanent Select Committee on Intelligence, see H. Res. 658 of July 14, 1977, Rule XLVIII, sec. 10(a) and (b)].

Despite misgivings on constitutional and other grounds, "[p]rior notice to the Intelligence Committees of significant covert actions programs has been the practice since 1976..."

[See prepared statement of William G. Miller, former Staff Director, Senate Select Committee on Intelligence, Sep. 22, 1983, HPSCI Hearings, Comm. Print, 1984].

On July 14, 1977 the House of Representatives established the House Permanent Select Committee on Intelligence, adopting H. Res. 658 by a vote of 247 to 171. The House Committee jurisdiction paralleled that of the Senate Committee, without restriction to agencies of the intelligence community.

The following month staff assistants of the President asked the staff of the Senate Select Committee on Intelligence to review a draft Executive Order on intelligence activities. With amendments, some suggested by the Committee staff, this became President Carter's Executive Order 12036 of January 24, 1978.

Section 3-4 of E.O. 12036 [43 F.R. 3674 at 3689-90] provided for reports to the intelligence committees of Congress. It applied to the "Director of Central Intelligence and heads of departments and agencies of the United States involved in intelligence activities." It utilized the "fully and currently informed" standard of the Atomic Energy Act and S. Res. 400 of 1976. It included a duty to report on significant anticipated activities "which are the responsibility of, or engaged in, by such department or agency."

In sum, the legislative history of enabling resolutions of 1976 and 1977 for the present intelligence oversight committees of Congress indicate legislative intent that any head of a department, agency or institution that is involved in intelligence activities report to these committees. The initial draft of 1975 explained an intent to include the National Security Council within the purview of the reporting duties.

Executive Order 12036 of January 1978 applied to all departments and agencies of the United States, and impliedly would cover the National Security Council staff were it to have proposed to engage in "significant anticipated activities" during application of this Executive Order in 1978-1981.

EXCLUSION OF THE NATIONAL SECURITY COUNCIL AND STAFF FROM THE SCOPE OF MANDATORY REPORTING DUTIES UNDER THE INTELLIGENCE OVERSIGHT ACT OF 1980.

In 1978 the Senate Select Committee on Intelligence, through a subcommittee chaired by Senator Walter Huddleston, introduced draft legislation that, were it enacted, would have reduced the scope of mandatory reporting to heads of departments, agencies or other entities of the intelligence community. On February 9, 1978, Senator Huddleston and 19 co-sponsors introduced S. 2525, the National Intelligence Reorganization and Reform Act of 1978. Representative Boland introduced S. 2525 in the House as H.R. 11245 on March 2, 1978.

As a proponent of streamlined, mission-oriented legislative charters, I did not actively participate in drafting the 263-page 1978 charter legislation (S. 2525) or the initial 172-page 1980 charter legislation (S. 2284). Section 151(g) of S. 2525 required reports to the intelligence oversight committees by the "head of each entity of the intelligence community...."

The 1978 Senate charter legislation (S. 2525) introduced the concept of an "entity" of the intelligence community, but did not include the term in its definitions. Sec. 104(16) did define the "intelligence community" without any express inclusion of the NSC or its staff, and impliedly exempted that Council and staff from mandatory reporting.

A limitation of mandatory reporting duties to the head of each "entity of the intelligence community" remained in the provisions of S. 2284, the National Intelligence Act of 1980, introduced by Senator Huddleston, Chairman of the Subcommittee on Charters and Guidelines, on February 8, 1980. See Section 142(a). Rep. Boland introduced a companion bill, H.R. 6588 in that same month.

As opposition to detailed legislative charters developed in the executive branch (objecting to reporting other than "in a timely fashion") and in the Congress, the Senate Select Committee Staff Director approved my review of the 172-pages for the purpose of abbreviation and simplification consistent with protection of civil rights and safeguards. I consulted with Keith Raffel, John Elliff, and others of the Committee staff between February 14 and March 19, 1980, first to make technical changes in S. 2284 as drafted, and second, to produce streamlined charter legislation.

It was during the first phase of review in late February 1980 that I identified the failure of S. 2284's oversight provisions to provide for mandatory reporting of NSC intelligence activities. I proposed to extend the reporting duties of Section 142(a) beyond the head of each "entity of the intelligence community," for the express purpose of including the National Security Council and its staff within the scope of reporting duties respecting intelligence activities, including "significant anticipated intelligence activities...."

Neither Mr. Keith Raffel nor Mr. John Elliff, who had participated in the work of the Subcommittee on Charters and Guidelines, favored express inclusion of the National Security Council in the reporting duties under Sec. 142(a) of S. 2284. Neither claimed that the NSC was covered by the phrase "intelligence community." It is clear from the pertinent text on Congressional oversight of intelligence activities that neither the NSC nor its staff was covered. In particular, section 103(12) defined "intelligence community" and "entity of the intelligence community" to mean --

(A) the Office of the Director of National Intelligence;
(B) the Central Intelligence Agency;

(C) the Defense Intelligence Agency;
(D) the National Security Agency;
(E) the offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs;
(F) the intelligence components of the military services;
(G) the intelligence components of the Federal Bureau of Investigation;
(H) the Bureau of Intelligence and Research of the Department of State;
(I) the foreign intelligence components of the Department of the Treasury;
(J) the foreign intelligence components of the Department of Energy;
(K) the successor to any of the agencies, offices, components, or bureaus named in clauses (A) through (J); and
(L) such other components of the departments and agencies, to the extent determined by the President, as may be engaged in intelligence activities."

Specific requirement of reporting by the National Security Council raised constitutional issues relating to "executive privilege" and separation of powers. It was my position that, unless the mandatory reporting duties included the NSC and its staff, there was a foreseeable risk of the NSC managing covert operations through the NSC staff itself, without a specific duty to report on such activities to the oversight committees of the Congress. The Charter and Guidelines Subcommittee staffers indicated that the President would not authorize this change in customary practice, precisely because, upon discovery, the Congress would enact legislation requiring mandatory reporting by the National Security Council or the President regarding its activities.

At this point (on a day in February 1980 that I cannot ascertain from my records), I took the issue to the staff director of the Senate Select Committee, William G. Miller. Any change of the nature I was proposing would reopen constitutional issues of concern to the Attorney General and the Counsel to the President. Mr. Miller reminded me that both Vice President Mondale and David Aaron, the Deputy Special Assistant to the President for National Security Affairs, served with the Committee. The President would not permit, I was advised, the conduct of covert operations by the NSC staff itself. I reminded the staff director that intelligence charters must be designed to function under changed and partly unforeseen circumstances, well beyond the service of officials who knew the precise reasons for legislative action. The staff director decided to leave sec. 142(a) as it stood. Hence, I did not reiterate my proposed redraft when I summarized a set of possible amendments to S. 2284 on March 4, 1980.

I did recommend providing the President additional flexibility, under "extraordinary circumstances," to delay from 48 hours to 30 days notice to the full oversight committee membership, so long as prior notice were provided the leadership and committee chairmen and vice chairmen (sec. 125 of S. 2284). This was a proposed amendment that was not adopted.

On March 17, 1980 Representative Aspin introduced H.R. 6820, a much abbreviated intelligence bill. It retained the provisions of S. 2284, effectively exempting from mandatory reporting duties the NSC staff, even if they were engaged in intelligence activities. Sec. 102(a) stated:

> "The head of each entity of the intelligence community shall keep the intelligence committees fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, that entity."

On March 19, 1980 Keith Raffel, William R. Harris, et al., of the SSCI staff completed a streamlined, simplified National Intelligence Act of 1980. Labeled "Draft C" (expectably following drafts "A" and "B"), it covered in 30 pages much of what S. 2284 initially covered in 172 pages. It retained the concept "entities of the intelligence community," and once again excluded the National Security Council and Staff from its list of "entities" [sec. 101(b)(1 through 12)]. This draft provided an impediment to, if not a guarantee against potential unreported, self-executed NSC covert operations: Section 103(b) provided that special activities be "conducted only by the Central Intelligence Agency," except when the President determined that another agency should support an activity. Whatever the merits of streamlined intelligence charters might have been, the consensus in support of any charters legislation had disintegrated during the earlier drafting of detailed charters (S. 2525, and S. 2284).

On April 12, 1980 the House Committee on Foreign Affairs provided for consolidated reporting of presidential findings, and favorably reported H.R. 6942. This retained the Hughes-Ryan Amendment, but reduced the reporting requirement from eight to the two intelligence committees of Congress.

On April 17, 1980 the Senate Committee on Foreign Relations held hearings on the role and accountability of the Special Assistant to the President for National Security. Whatever concerns the Foreign Relations Committee had did not result in legislation to require reports to the Congress on activities of the National Security Council or its staff.

On April 17, 1980 the Senate Select Committee reissued a revised draft of S. 2284. Shortly thereafter, the executive branch submitted to the Senate Select Committee a document labeled "Agreed SSCI-Executive Branch Condensation of S. 2284." This document generally reflected agreements, but also set forth executive branch preferences for legislative charters where issues remained unresolved. Section 132 retained a mandatory reporting duty for "the head of each entity of the intelligence community...."

Of some interest, section 111(c) of the so-called "Agreed SSCI-Executive Branch Condensation" specified that the Title not be construed to prohibit any department or agency from collecting, processing, or disseminating information if otherwise authorized to do so. Hence, the understanding of the executive branch (which had an interagency committee on intelligence charters in operation throughout enactment of the Intelligence Oversight Act of 1980) and the Senate Committee that drafted the legislation was that duties imposed by this Title not be applied to other entities of the federal government merely because they collected, processed, or disseminated intelligence information under other existing authority. Hence, the National Security Council, authorized by the National Security Act of 1947 to evaluate the quality of intelligence and otherwise authorized by the President, did not become an "intelligence entity" merely by reason of collecting, processing, or disseminating information.

The Senate Select Committee considered S. 2284 in executive session on April 30, and thereafter on May 1, 6, and 8, 1980. Senator Inouye proposed an amendment restricting prior reporting of significant anticipated covert activities under "extraordinary circumstances" as determined by the President. [See 50 U.S.C. sec. 501(a)(1)(B)]. Senator Wallop and Senator Moynihan proposed further reporting on significant intelligence failures. [See 50 U.S.C. sec. 501(a)(3)]. See S. Rpt. 96-730 for a summary of these amendments.

On May 8, 1980 the Senate Select Committee on Intelligence unanimously approved S. 2284 as amended, containing primarily the provisions for legislative oversight and provisions to protect the identities of agents. On May 15, 1980 the Committee issued S. Rpt. 96-730, to accompany S. 2284, the Intelligence Oversight Act of 1980. This report indicated that "references to 'any' department, agency, or entity in subsection (a) impose obligations upon officials to report only with respect to activities under their responsibility, subject to the procedures established by the President under subsection (c)." [S. Rpt. 96-730, May 15, 1980, p. 7].

On June 3, 1980 the Senate took up consideration of the Intelligence Oversight Act of 1980, S. 2284. A colloquy on the Senate floor represented concerns of the Counsel to the President, Lloyd Cutler, and General Counsel of CIA, Daniel Silver, that diverging executive-legislative views on executive privilege and on mandatory reporting be contained in the floor debate. The Senate adopted the Intelligence Oversight Act by a vote of 89-1.

The Senate's provisions for legislative oversight [what became subsections 501(a) through (d)] were not contained in the House

Bill, H.R. 7152. In the September 1980 Conference, members of the House Intelligence Committee (Rep. Boland and others), the House Armed Services Committee (Rep. Price and others), and the House Foreign Affairs Committee (Rep. Fascell and others) agreed to the Senate provisions for Sec. 501, with a supplementing amendment [sec. 501(e)]. This amendment indicated that duties to protect intelligence sources and methods did not authorize the withholding of reports to the intelligence committees of the Congress. See the House Conference Report 96-1350, on S. 2597.

The Senate (on Sept. 19th) and the House (Sept. 30th) agreed to the Conference Report. President Carter signed the Intelligence Authorization Act for FY1981, on October 14, 1980. Title V, the Intelligence Oversight Act of 1980 [P.L. 96-450, 94 Stat. 975], provides in Sec. 501(a) [50 U.S.C. 501(A)]:

> "The Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall --
>
> (1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives...fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intelligence activity....
>
> (2) furnish any information or material concerning intelligence activities which is in the possession, custody, or control of any department, agency, or entity of the United States and which is requested by either of the intelligence committees....
>
> (3) report in a timely fashion...any illegal intelligence activity...."

Notwithstanding efforts in 1980 to broaden its scope of coverage, what became Section 501(a)(1) of the Intelligence Oversight Act of 1980 did not represent a legislative effort to include operations of the National Security Council or its staff within the mandatory reporting duties of this subsection. Sec. 501 of the Intelligence Oversight Act did not prohibit the conduct of "special activities" by the staff of the National Security Council. A precursor draft (Draft "C" of March 19, 1980) that would have prohibited covert operations other than by CIA except by Presidential determination, was not enacted.

Over a three year period from the initial drafting of S. 2525 in late 1977 through enactment of the Intelligence Oversight Act on October 14, 1980, the linked reference to "department, agency, or entity" engaged in intelligence activities developed a meaning widely understood in the executive and legislative branches. This phrase of legislative art applied exclusively to the intelligence agencies or specialized intelligence collection components of the U.S. intelligence community. This definition did not include within its scope other entities of government that supervised the intelligence "entities" or summarized and disseminated their products. Indeed, the legislative history of the Intelligence Oversight Act of 1980 applies only to such of an "entity" activities as are "under their responsibility, subject to the procedures established by the President under subsection [501](c)." [S. Rpt. 96-730, May 15, 1980, p. 7].

SCOPE OF "DEPARTMENT, AGENCY, OR ENTITY" INVOLVED IN INTELLIGENCE ACTIVITIES SUBSEQUENT TO THE INTELLIGENCE OVERSIGHT ACT OF 1980.

EXECUTIVE ORDER 12333 (1981)

On December 4, 1981 President Reagan implemented section 413 of the Intelligence Oversight Act of 1980, by signing Executive Order 12333 [46 F.R. 59941], "United States Intelligence Activities."

Section 3.1 provided for the implementation of Congressional oversight. It established "[t]he duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities . . . ."

Section 3.4(e) defined "intelligence activities" to mean "all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order." Section 3.4(f) specified agencies or organizations of the "Intelligence Community," excluding from the listing the National Security Council and its staff. It is notable that the Executive Order followed the established scope of the Intelligence Oversight Act of 1980, and also notable that the principal coordinator of the Executive Order, Kenneth DeGraffenreid, came to the NSC staff from staff work at the U.S. Senate Select Committee on Intelligence, where he served during enactment of the Intelligence Oversight Act.

SEC. 801(A) OF THE INTELLIGENCE AUTHORIZATION ACT FOR FY1984 AND SUBSEQUENT INTELLIGENCE AND DOD AUTHORIZATION ACTS

The Intelligence Oversight Act of 1980 and the 1981 Executive Order implementing it define intelligence activities of departments, agencies or entities with exclusive regard to entities of the "intelligence community." This establishes a presumption that only "intelligence community" entities are intended to be covered by other intelligence-related legislation utilizing this phrasing. But the presumption may be rebutted by evidence of actual legislative intent to the contrary.

The October 20, 1983 amendment (Boland) to the Intelligence Authorization Act for FY1984 [P.L. 98-215, sec. 801(a)] prohibited obligating or expending funds for the Central Intelligence Agency "or any other department, agency, or entity of the United States involved in intelligence activities" for covert assistance to military operations in Nicaragua. [Roll Call 403, Cong. Rec. p. H8426].

The Intelligence Authorization Act for FY1984, Sec. 108 [P.L. 98-215] authorized not more than $24 million to CIA, DOD "or any other agency or entity of the United States involved in intelliigence activities which may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua...."

The specific legislative history of these or subsequent Boland Amendments is not known to me. Consequently, I would not seek to evaluate whether the presumption of a limitation to entities of the "intelligence community" as defined in Executive Order 12333 has been rebutted by the specific legislative history of these Acts of Congress.

Acts of Congress requiring evaluation of legislative intent include: Sec. 106 of Title I of the Intelligence Authorization Act for 1987 [P.L. 99-569] providing that funds available to the [CIA, the DOD] "or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1987 to provide funds, material...."; and Sec. 9045 of the DOD Appropriations Act for FY 1987 [P.L. 99 -591] prohibiting expenditure of funds available to CIA, DOD "or any other agency or entity of the United States involved in intelligence activities...."

INTELLIGENCE AUTHORIZATION ACT FOR FY1985, TITLE VIII, SEC. 801

Sec. 801 of Title VIII of the Intelligence Authorization Act for FY1985 provided, without regard to the agency or entity sponsoring the activity that: "No funds authorized to be appropriated by this Act or by the Intelligence Authorization Act for fiscal year 1984 [Public Law 98-215] may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation...." This prohibition is not in any way limited to entities of the intelligence community.

Similarly, section 2907 of Title IX of P.L. 98-369 [98 Stat. 1210, 22 U.S.C. 2151] prohibits the mining of ports or territorial waters of Nicaragua, without limit to an entity of the intelligence community.

SENATE EXERCISE OF INTELLIGENCE OVERSIGHT ACT JURISDICTION JURISDICTION IN 1984 OVER THE BUREAU OF VERIFICATION AND INTELLIGENCE, U.S. ARMS CONTROL AND DISARMAMENT AGENCY

This review of legislative history relating to "departments, agencies, and entities" involved in intelligence activities would be incomplete without noting the practices of the intelligence oversight committees since enactment of the Intelligence Oversight Act in 1980. The two oversight committees have a special stake in the Intelligence Oversight Act of 1980, particularly because it treats their access to the information required for effective legislative oversight.

To the best of my knowledge, in the period 1980 through 1983 the intelligence oversight committees treated Section 501(a)(1) as if it covered only entities within the intelligence community, as defined in President Reagan's Executive Order 12333 (1981).

In the spring of 1984 the Senate Select Committee on Intelligence, whose staff had drafted section 501(a) of the Intelligence Oversight Act, first applied that section to an "entity" outside the intelligence community. During preparation of the Intelligence Authorization Act for FY1985, the Committee reviewed the requirements and capabilities of the Bureau of Verification and Intelligence of the U.S. Arms Control and Disarmament Agency (ACDA).

On behalf of the Chairman of the Budget Subcommittee (Senator Wallop) of the SSCI, in the spring of 1984 I reviewed the legislative history of the Intelligence Oversight Act of 1980, and prepared a letter to the Director of ACDA, advising the Director of the Committee's assertion of jurisdiction under the Intelligence Oversight Act of 1980. To the best of my knowledge, after review of my proposed assertion of oversight jurisdiction by the staff director, the Committee Chairman, Senator Goldwater, signed the letter to the ACDA Director in the spring of 1984.

Predictably, the Director of the Arms Control Intelligence Staff of CIA objected informally to the assertion of oversight jurisdiction, on the grounds that ACDA was not a part of the "intelligence community" as specified in E.O. 12333. There was, however, a statutory basis for the assertion of jurisdiction. Section 37 of the Arms Control and Disarmament Act (the Derwinski Amendment of 1977) provides the Director of ACDA legal responsibility for verification of compliance and noncompliance with arms control agreements. The Bureau of Verification and Intelligence performs statutorily-required intelligence assessment functions under Section 37 of the Arms Control Act. The Director of ACDA accepted the Senate Select Committee's assertion of oversight jurisdiction in 1984.

CONCLUDING REMARKS

In the period 1975-1978, Congressional investigations of intelligence activities encompassed entities of the entire federal government, and proposals for mandatory reporting to the Congress mirrored that broad jurisdictional concern.

Commencing in 1978, the intelligence oversight committees adopted the procedure of enacting separate intelligence authorization acts for all entities of the "intelligence community" engaged in national intelligence or counterintelligence. Concurrently, from 1978 onwards, draft legislation proposing mandatory self-reporting by heads of intelligence departments, agencies, or entities encompassed expressly specified departments and agencies and other "entities" that performed classified missions within the "intelligence community." Proposals in 1980 to extend the scope of "entities" to include the National Security Council and its staff were expressly rejected in the course of streamlining what became the Intelligence Oversight Act of 1980.

This legislative history establishes a presumption that parallel or subsequent legislation including the phrase "departments, agencies, or entities" engaged in intelligence activities applies to entities of the "intelligence community" and not the National Security Council or its staff. But the presumption may be rebutted by any specific legislative history of a later Act of Congress if that legislative history indicates unequivocal intent to prohibit the expenditure of any federal monies by any entity of the federal government. I am simply not aware of the precise legislative history of restrictive legislation that originated in the House of Representatives in 1983 and later years.

Whatever the specific findings may be regarding the scope of legislative restrictions in 1984 and thereafter, a general principle must apply to all intelligence activities conducted in a democratic society: Intelligence activities and related covert activities conducted in the national security interests of the United States, must be conducted under and subject to the rule of law. I trust that the foregoing review of intelligence laws and Congressional oversight practices will assist your Committee as it completes a difficult task.

Respectfully submitted,

William R. Harris

APPENDIX B

John Norton Moore
824 Flordon Drive
Charlottesville, Virginia 22901

August 4, 1987

The Honorable Daniel K. Inouye
Chairman, The Select Committee on the
Secret Military Assistance to Iran &
the Nicaragua Opposition
SH-722 Hart Senate Office Building
Washington, DC 20510-1102

Dear Chairman Inouye:

During the course of the Iran-Contra hearings Lieutenant Colonel Oliver North apparently inadvertently created the impression that I had provided him with legal advice concerning the constitutionality and scope of the so-called "Boland Amendment" that has been at the center of the hearings, although he seems to have implicitely corrected this in later testimony. Since I had not provided any such legal advice, I immediately called his counsel and sent a letter to correct this apparent misimpression. Enclosed is a copy of the letter that I would appreciate your making part of the hearing record.

As a national security lawyer -- indeed one who has sought to pioneer the new field of national security law -- I have long urged the establishment of a strong legal office in the National Security Council (NSC) staff, with involvement in all activities of the NSC. When the Tower Commission was appointed I wrote a letter to Chairman Tower urging establishment of such an office. It was a matter of great satisfaction for me to see that the Commission recommended such an Office, that the President singled this recommendation out as one of the recommendations he believed most important to the Nation, and that Assistant to the President for National Security Affairs, Frank C. Carlucci, has moved vigorously and effectively to implement this recommendation. This is, I believe, one of the most important structural changes in the national security process to emerge from the Iran-Contra affair and I hope that your Committee will endorse this change.

As I am sure the Committee is aware, there is a great difference in lawyering roles in being consulted for legal advice prior to events and a variety of lawyering roles, including public comment on the law, after events have transpired. Prior to events, effective lawyering should provide, among other things, advice that prevents persons acting in good faith from having future legal problems and advice that includes the creative potential of legal-system options for serving the national interest. In contrast, after events have transpired, lawyers have an obligation to work for due process in protecting individuals who have acted in good faith, and in educating the public about important issues. In this latter connection, it is noteworthy that the hearings produced diametrically opposed interpretations of the applicable "Boland Amendment" from public servants, all of whom seem to have conscientiously sought to serve the nation. Surely a major lesson of the Iran-Contra affair has been the great need for the structural change that has now been made of a strong legal office in the NSC to provide legal advice in advance as to significant NSC activities.

Sincerely,

John Norton Moore

John Norton Moore

JNM:kww

Enclosure: as stated

cc: Mr. Brendon Sullivan
    Mr. Eugene C. Thomas, President,
      American Bar Association
    Richard A. Merrill, Dean, University of Virginia
      School of Law

John Norton Moore
824 Flordon Drive
Charlottesville, Virginia 22901

July 9, 1987

Mr. Brendon Sullivan
Williams & Connally
17th and Eye Street, N.W.
Washington, D.C. 20003

Dear Mr. Sullivan:

It has come to my attention that your client, Lieutenant Colonel Oliver North, may have inadvertently created the impression by his testimony this morning that I have provided him with legal advice regarding the constitutionality and scope of the so-called "Boland Amendment" that has been at the center of the current Iran-Contra controversy. This may have been implicitly corrected this afternoon, when I am told he testified that he had received legal advice on this issue only from the present Counsel to the President's Intelligence Oversight Board, but I would appreciate your correcting the record should any doubts remain.

As you are no doubt aware, I served as a Special Counsel for the United States in the *Nicaragua* case before the International Court of Justice. Subsequently, in my personal capacity, I have written and spoken widely about the war in Central America, including a book, *The Secret War in Central America* (published by University Publications of America earlier this year), and several addresses on the legal issues delivered before members of the press and congressional staff at the White House.

There have, of course, been a multiplicity of "Boland Amendments" concerning Nicaragua dating back to December 1982. On more than one occasion in years past when I have been asked to address some of the legal issues involved in the Central American controversy I have expressed the view that I did not believe U.S. support for the Contra program conflicted with the "Boland Amendment"-referring at the time, of course, to earlier versions and events then known. Certainly this is reflected in my published writings and is a conclusion concerning these earlier "Boland Amendments" that seems well supported by the record. I have been told that Colonel North was frequently called upon to address similar audiences, and although I don't recall encountering him in that context, it is quite possible that he heard me express such views on the "Boland Amendment," and he is likely to be familiar with my published writings. He may also have been familiar with my Opinion Editorial "Government Under Law and Covert Operations" published in the

Washington Times on February 24, 1987, in response to the Iran-Contra controversy that does make the point that the scope of the 1984-85 "Boland Amendment" has been embroiled in a dispute.

For the record, however, prior to the public disclosure of the current Iran-Contra controversy late last year I had not even had occasion to examine the 1984-85 "Boland Amendment," and thus I am certain that I did not provide Colonel North or anyone else with a "legal opinion" about its constitutionality or whether it encompassed the National Security Council. The first time I have had occasion to even preliminarily review the range of domestic legal issues involved in the Iran-Contra affair was during the writing of an opinion editorial on the issues after the affair had become public.

Although the "Boland Amendment" at issue in the current controversy seems to me, on the basis of a preliminary review, to contain relevant ambiguities--and at least one separation-of-powers constitutional scholar whose judgment I respect has expressed doubts to me about the constitutionality of at least certain interpretations of the amendment--I have not at this time personally taken a definitive position on these important issues which would, of course, among other things require a careful review of the legislative record. I have, however, on numerous occasions expressed my view in response to media inquiries, after the Iran-Contra affair had become public, that the relevant "Boland Amendment" may well be ambiguous, and to the extent that it is, well recognized principles of due process and separation of powers would require that it be interpreted to protect Executive Branch flexibility.

Thus, while I had not had occasion to review the pertinent "Boland Amendment" prior to the Iran-Contra affair becoming public knowledge, and have still not had an occasion to do a careful legal analysis of that amendment and its voluminous legislative history, it is my preliminary judgment on reviewing that amendment that it may well be ambiguous in several key respects. It is also my judgment that there are strong policy reasons why any significant ambiguity should be construed in favor of continued Executive Branch authority. Certainly, when Congress does act in an area of sensitive presidential power, such as the conduct of covert activities, it must do so clearly. Any other conclusion does a serious disservice to separation of powers and the dedicated men and women who serve to implement foreign policy in the Executive Branch.

I have no doubt but that Colonel North's reference to me this morning was a consequence of misunderstanding, and I have no desire to add to his burdens at this difficult time. But as a lawyer, I am sure you can appreciate my concern that an inaccurate impression not be left that I have participated in providing legal counsel to Colonel North on the "Boland Amendment" or any other national laws involved in the Iran-Contra affair.

It would not be inaccurate for Colonel North, or any other individual, to note that on numerous occasions, including in my recent book *The Secret War in Central America*, I have publicly expressed my conviction that United States assistance to the Contras is consistent with the norms of international law as reflected in the United Nations and Organization of American States Charters. This is premised upon a factual recognition of covert Nicaraguan armed aggression against El Salvador and other democracies in the region dating back to at least 1980--a conclusion affirmed on several occasions by both the House and Senate Intelligence Committees. This armed aggression--which predated by well over a year the United States decision to provide similar assistance to the Nicaraguan opposition in an effort to deter the ongoing effort to overthrow the government of El Salvador--violates article 2(4) of the United Nations Charter and numerous other prohibitions against aggression. It gives the United States a right of collective defense under Article 51 of the United Nations Charter and, indeed, may create a legal obligation under Article 3 of the Rio Treaty to assist El Salvador to meet the armed attack.

Enclosed is my Opinion Editorial "Government Under Law and Covert Operations," as well as a just completed piece "The Iran-Contra Hearings and Intelligence Oversight in a Democracy." This latter piece raises important issues that, I believe, should be addressed as to whether the current public hearings are the most appropriate mechanism for intelligence oversight of covert operations.

It is important to keep in mind that the views I have expressed over the years on these subjects are my own, and in particular should not be attributed to the United States Government, the American Bar Association, the University of Virginia School of Law, or any other organization with which I am or have been affiliated.

Thank you for your assistance.

With best wishes,

Sincerely,

John Norton Moore

John Norton Moore

JNM/sb

Enclosures: (1) "Government Under Law and Covert Operations" published as "The Rule of Law for the Covert"
(2) "The Iran-Contra Hearings and Intelligence Oversight in a Democracy"

cc: Mr. Eugene C. Thomas, President, American Bar Association
Dean Richard A. Merrill, Dean, University of Virginia School of Law

Government Under Law and Covert Operations

by

John Norton Moore*

The level of rhetoric about law violation in the Iran-Contra affair has been high. Some of the public debate has even assumed criminal violation, with prominent members of Congress speculating as to length of sentence and calling for Presidential pardons. Yet the discussion has been as void of specifics about such violations as it has been pregnant with allegations.

Without knowing all the facts and the full context of actions it is not possible to make responsible legal judgment. It is important, however, that the debate proceed in a more complete context of assumptions about government under law. Both the important principle of due process and real-world complexities of the rule of law for covert operations suggest that the level of rhetoric should be restrained as we focus more clearly on the enduring issues.

First, no one involved in the Iran-Contra affair should be presumed guilty of law violation--much less criminal violation--until found guilty by a court of law. Just as our democratic system requires that government officials operate within the law it also provides that they be accorded a presumption of innocence until a duly constituted court finds otherwise. Similarly, it should be clearly understood that appointment of an independent counsel does not demonstrate law violation. The Ethics in Government Act, which Congress courageously did not apply to itself, has an extraordinarily loose standard for the appointment of such a counsel. This has been borne out by most such counsel reporting that no law violations have occurred within their mandate. It should also be understood that there is a major difference between civil and criminal responsibility. Criminal responsibility flows only from violation of clearly applicable pre-existing criminal statutes. Indeed, if individual criminal--or even civil--responsibility flowed inexorably from all nonconformance with statutes the members of Congress would be guilty of multiple offenses as they repeatedly ignore their own budget act.

Most importantly, the structure of law as it applies to covert operations is highly technical and complex and the public debate has been as simplistic as the law is complex. For example, the public discussion of legal issues has assumed that the Arms Export Control Act applies to presidentially authorized special activities. Special activities, however, for reasons of their extreme sensitivity and secrecy, have their own legal structure and it may well be that this and many other laws enacted for quite different settings do not apply to such activities. Given the strong constitutional underpinnings of special activities as presidentially directed, if particular statutory restrictions are constitutionally valid at all, certainly they would need to be unambiguous in their application. Similarly, much of the public discussion has assumed that the failure to provide notice to the intelligence committees constitutes a violation of the shall inform "in a timely fashion" language of the Intelligence Oversight Act of 1980. But this ambiguous language papered over a serious underlying constitutional dispute between Congress and the Presidency as to whether the President must notify Congress of all special activities. Moreover, Congress conceded by the Act that not all such activities must be reported in advance and in that setting the more reasonable interpretation of "timely" would seem to relate functionally to the reason for great secrecy rather than a mechanical passage of time. The Carter Administration seems to have interpreted the Act this way as it spent months planning the Iran hostage rescue operation with no reporting under the Act. These Executive Branch concerns about reporting all special activities in advance to committees of Congress reflect enduring policy concerns about the ability of Congress as an institution to maintain secrecy. This institutional concern has been shared by the constitutional framers, George Washington as our Nation's first President, and by numerous administrations since, both Democratic and Republican. Moreover, a policy requirement for extraordinarily sensitive covert operations is to hold knowledge to the smallest possible group whether in or out of Congress. Informing members of Congress of all such operations not only increases the absolute number of persons with information but may also have a multiplier effect as Executive Branch personnel associated with Congressional relations become involved. Whatever the policy wisdom of not reporting, certainly the failure to report under the ambiguous Intelligence Oversight Act is not a legal scandal, and it is probably within the President's power both as a matter of statutory and constitutional law. To the same effect, most of the numerous "Boland Amendments" limiting assistance to the Contras clearly do not apply to the activities in question and the one that may be applicable has been embroiled in a dispute as to whether it applied to activities of the National Security Council and, more importantly, is by its terms fact-sensitive, including whether particular funds were available to an agency or entity of the government within the meaning of the law. Whatever the policy wisdom of proceeding in the face of legal ambiguity (as well as other policy issues in linking the Iranian and Contra operations), policy shortcomings do not show that those who acted did so illegally. Whatever the final resolution of a host of technical legal issues raised by the affair, due process suggests that the professional reputation of our public servants not be lynched by a post-Watergate mob that convicts of criminal violation when there may be no law violation, civil or criminal. We should remember that the essence of McCarthyism is the unfounded allegation.

Second, whatever the final resolution of legal and policy issues in this case, the Administration should take this occasion to appoint a full-time general counsel to the National Security Council staff. After years of criticism by international lawyers who urged the addition of legal experts to the National Security Council, Dr. Zbigniew Brzezinski added an excellent lawyer to the staff who served about half-time as a legal specialist and that legal presence has been continued and augmented under the Reagan Administration. There should, however, be a clearly designated full-time general counsel on the staff with an office of one or two national security law specialists and that office should operate under procedures that ensure its involvement in all national security activities, overt and covert. It is simply a fiction that all national security issues, particularly those arising in crisis management settings, will inevitably be reviewed by general counsel in the major departments. The absence of full involvement of knowledgeable lawyers in national security decisions has for years harmed our national foreign policy under both Democratic and Republican administrations. Such involvement is not required solely to prevent illegal actions, as important as that may be, but also to provide relevant policy advice on associated political and implementation issues. If such an enhanced presence were needed two decades ago, it is now imperative given the extraordinary growth of national security law over the last two decades. In the future any foreign policy makers who do not seek legal counsel before a significant new activity have only themselves to blame for subsequent legal problems.

Third, our Nation is likely to have no ability to conduct covert operations if it conducts its post-mortem of failed operations as the Iran affair has been handled. It is understandable, and probably desirable, once the public concern about the Iran-Contra affair had reached the level of hysteria, that the Administration request appointment of an independent counsel and Congress establish special Senate and House Committees to investigate. For the future, however, we should use the capable mechanisms established by law during the 1970s' sweeping reorganization of intelligence oversight. That is, allegations about illegality and other improprieties in special operations should be investigated solely by the Senate and House Select Committees on Intelligence, the President's Intelligence

Oversight Board, and the Attorney General. Following such investigations any illegal conduct should be made known to the American people. In the meantime, an Adminstration and the Congressional Committees should "neither confirm nor deny" allegations about special activities. We cannot expect as a Nation to retain the ability to conduct covert operations if allegations about such operations, perhaps leaked by our adversaries, can trigger a public orgy of self-flagellation. That is, a pattern of public disclosure and multiple investigations about the specifics of special activities, triggered simply by allegations of policy mistakes or legal impropriety, would cripple our ability as a Nation to have options that may sometimes be needed to avoid either war or capitulation to a ruthless enemy with no such constraints. There is an additional reason that public debate is not the appropriate forum to reach conclusions about covert operations. By the nature of such operations an Administration is usually not able to disclose the detailed information and precise context in which it acted without disclosing intelligence sources and methods or betraying those who have trusted us perhaps at great personal risk. Thus, inevitably public debate about special activities is a struggle in which the American government as a whole must defend itself with both hands tied behind its back. The result is likely to be not an informed public but a misinformed public condemning its leaders on partial information.

Finally, and perhaps most importantly, we must understand and deal with an underlying structural problem of enhanced Congressional activism triggering unintended confrontations with the Presidency during national security crises when the Nation can least afford to be immobilizing itself. In significant measure this structural weakness contributed to escalation of the Iran-Contra affair rather than damage limitation. During the 1950s and 1960s Congress acted with the Presidency to deter potential adversaries, in resolutions such as the 1962 Cuban Resolution. In a post Vietnam-Watergate setting, however, Congress has more frequently sought to constrain American actions. Frequently these constraints, which have hugely multiplied in the last two decades, have undermined rather than enhanced deterrence. Certainly the to-date double reversal of Congress on support for the Contras is not a stable basis for a coherent American policy or credible deterrence. Even more seriously the pattern of Congressional activism has fueled potentially catastrophic constitutional confrontations with the Presidency as Congress has aggressively embodied in legislation, such as the War Powers Act and the Intelligence Oversight Act, its views of appropriate Congressional powers. Yet in each case its view differed from the Presidential view and the President cannot, either as a matter of effective conduct of the Presidency or consistency with his oath to uphold the Constitution, simply acquiesce in what may be felt by the Executive Branch to be a usurpation of separation of powers. In this setting it is not surprising that strongly committed Executive Branch officials, however mistakenly, might seek to interpret ambiguities in favor of Presidential prerogative and stable policy. Nor is it surprising that real-world inadequacies and ambiguities for protecting secrecy in current oversight mechanisms for sensitive special activities would encourage a risky policy choice in withholding prior notice from Congress. Most dangerously, a continuation of Congressional activism in legislating Congress's version of separation of powers in foreign policy--legislation that constitutionally cannot alter the underlying constitutional reality--may some day trigger a direct constitutional clash between Congress and the President in a national security crisis when the Nation has no margin for error. Surely government under law requires a more sensitive accommodation of separation of powers in foreign affairs than Congress writing its own ticket. Congress should, as part of the general introspection from the Iran-Contra affair, reflect on its own contributing role. At minimum our Nation needs a more effective legal structure to protect our most sensitive categories of national security information from either Congressional or Executive Branch leaks. Such reform could enhance broadened participation both in policy formulation and oversight of sensitive special activities. More broadly, Congress and the President should establish a joint Executive-Congressional Commission appointed half by the President and half by Congress to explore non-binding guidelines--as opposed to rigid statutory constraints--that both branches might accept across a spectrum of foreign policy process issues, from the war powers to intelligence oversight reporting, to encourage the Congressional-Executive consensus on procedures for interbranch coordination our Nation must have for an effective foreign policy. No governmental task is more imperative for our national security.

**John Norton Moore is Walter L. Brown Professor of Law and Director of the Center for Law and National Security at the University of Virginia School of Law. Formerly he served as Counselor on International Law to the Department of State and Chairman of the American Bar Association Standing Committee on Law and National Security.*

The Iran-Contra Hearings and Intelligence Oversight in a Democracy

by
*John Norton Moore**

From George Washington to Ronald Reagan American presidents have understood the importance of intelligence. Following the surprise attack at Pearl Harbor and the American involvement in global war, the nation built and has maintained a strong foreign intelligence capability. Without such a capability, verification and thus arms control would be virtually impossible, enhanced fear of surprise attack would reduce stability and require higher arms expenditures, the nation would be largely defenseless against foreign intelligence operations, the national defense effort would be blinded, and the nation would lose a range of options between diplomacy and war.

But just as our democracy requires an effective foreign intelligence capability, so too it requires careful oversight of that capability. Covert activities, particularly, must be undertaken only after a careful vetting to ensure that they are truly in the national interest and are authorized according to law. Intelligence failures, such as the recent Iran-Contra affair, must receive careful review so that the same mistakes will not be repeated. And any allegations of illegality or impropriety, of course, must be promptly investigated.

Intelligence oversight, however, is not like oversight of the social security program or the Department of Agriculture that can proceed fully in the open. Rather, it must respect the requisite secrecy of the intelligence process. Failure to do so can severely harm the nation's capabilities in intelligence.

No one can review the evidence to date in the Iran-Contra affair without understanding that serious mistakes were made, particulary, the repeated--but understandable--mistake made by virtually all the democracies to seek to bargain with terrorists for the release of hostages seized just for that purpose by radicals who trample both democracy and human rights. That mistakes were made, however, does not justify further mistakes in our process of oversight.

In my judgement the nationally televised Iran-Contra hearings are--and will be regarded by history--as a serious mistake in efforts at intelligence oversight. The motivation of the hearings and the professionalism of the distinguished panel of some of the Nation's most able legislators is not in doubt and is not the issue. Rather, the issue is whether publicly televised oversight hearings are the best form of oversight of covert operations taking into account both the need for effective intelligence and effective oversight. The answer is a clear no.

The Iran-Contra hearings are a bad precedent in intelligence oversight for at least five reasons. First, to publicly reveal the details of failed American intelligence operations--of which the Iran-Contra affair is not the first and will not be the last--will have a severe chilling effect on the ability of the nation to carry out intelligence functions in the future. Will other nations be willing to cooperate with the United States in secretive operations if they believe such operations can become public knowledge? Will vital sources of human intelligence become more difficult for the United States to recruit? Will foreign intelligence services be as willing to share information with the United States or to suggest possible opportunities for United States intelligence? The answer to all these and other such questions is surely negative for effective American intelligence if other nations perceive that our process--or even possible process--of oversight review of failed intelligence is to hold nationally televised hearings relishing in the details of all aspects of the operations.

Second, because of the difficulty of fully discussing covert operations publicly--or they would not need to be covert--and the inevitable need to protect sources and methods, any public debate is likely to be distorted and one-sided in which the intelligence community--and the Executive branch as a whole--may well be unable to fully present the case for their actions. For this inescapable reason it is as likely that public debate about failed intelligence operations will misinform as that it will inform. The broadside against the President's Intelligence Oversight Board that emerged during the hearings is a good example. The Board was created in the wake of the Church Committee hearings as a mechanism for ensuring intelligence community compliance with law, and particulary in recent years it has had an important impact. Moreover, it seems to have been the only entity within the United States Government to have even raised the legal issues during continuation of the failed operations. For its effort, however, it and its legal counsel were publicly pilloried (and not on the merits but on an attack against the counsel's credentials). Even more wrongly, the Nation has been presented with a distorted view of an important check in the process of intelligence oversight.

Third, the hearings, while nominally in pursuit of legislative oversight, in many respects have the appearance of a clockwork orange trial by grand inquisitors for the titillation of a national audience. While the constitutionally permitted purpose of Congressional hearings is solely to support legislative function, the overall hearings give a strong impression of greater interest in demonstrating individual impropriety or wrongdoing. As such, the hearings are dangerously close to an abuse of Congressional power. Even more importantly, no court yet conceived has thought of interrogation of those called before it by multiple accusers, some with what could be regarded in other settings as a conflict of interest in demonstrating wrongdoing. Nor does due process permit preparation of the accusers case in secret or denial of the right to cross-examine or make a full statement. Even more importantly, the interrogation proceeds in an atmosphere of prejudgment about the law. And the judging panel reveals startling asymmetries in knowledge of the legal complexities of the case and opinions about the law. Many simply assume that shredding of intelligence documents proves criminality. Others make the assumption, without legal analysis, that one or more of a confusing array of Boland Amendments has been violated. Yet shredding does not prove criminality, and there are very fundamental legal issues concerning the relevant Boland Amendments, most particularly whether their real ambiguities concerning scope of applicability were intended by Congress to prohibit efforts at third nation or private support for the Contras and whether any ambiguities should be and would be interpreted in favor of continued Presidential power. Despite an absence of findings about the law, judgments about witnesses are solemnly delivered before a national television audience with no opportunity for rebuttal. Despite the professionalism and integrity of the Iran-Contra hearing panel and staff, nationally televised hearings such as this one do present pressure for personal or partisan advantage to which lesser legislators might succumb. If failed intelligence operations are in the future to be tried by this new televised star chamber, then we will inevitably destroy the careers of fine Americans whose crime has been to misread an ambiguous stream of congressional pronouncements or, indeed, even to do their investigative duty as required by the law. As the Nation bitterly learned in the McCarthy Committee hearings, trial by adversary televised congressional hearings may destroy the reputations of fine

Americans at little gain in legislative knowledge. It is a precedent we should carefully review and that Congress should limit.

Fourth, if the Iran-Contra hearings are to provide broader legislative investigation of compliance with legal constraints on private sector support for competing factions in the Central American War, then they should do so on an even-handed basis. It is inevitable that an inquiry focusing solely on support for the Contras, and ignoring the extraordinary efforts by and on behalf of the Sandinistas and the FMLN guerrillas in El-Salvador, will have the appearance of an ideological imbalance. If one is a fit subject for a publicly televised national inquiry, it is hard to imagine the grounds on which contending efforts are to be ignored in such an investigation, if, of course, there is a genuine legislative purpose in such hearings as opposed principally to a focus on allegations of individual wrongdoing.

Finally, the displacement of the normal intelligence oversight mechanisms established after the Church Committee hearings can only weaken those mechanisms that must do the important job of intelligence oversight on a day to day basis. This objection also applies to investigation of failed intelligence operations by an independent counsel. Our current intelligence oversight mechanisms are workable and include the bipartisan House and Senate select committees on intelligence, the Attorney General, and the President's Intelligence Oversight Board. If we are to strengthen these agencies in their oversight role they must be permitted to conduct the review of failed operations and investigation of any illegalities or improprieties. As long as that review includes review by a bipartisan Congressional entity, there cannot be any serious concern that an Administration will simply cover up its own failures. The public need to know can be fully met by issuance of public reports where evidence of illegalities or other improprieties should be revealed. And certainly legislative facts needed for the legislative process can be assembled in the existing bipartisan select committees as well as in a public ad hoc committee. For the future, American Presidents should simply neither confirm nor deny allegations concerning covert operations and should refer allegations of improprieties or illegalities in such operations to the normal oversight mechanisms. And Congress, which fully participates in that process, should endorse it as the appropriate mechanism.

No other Nation seems to have had the poor judgement to review its intelligence failures completely in public. The Federal Republic of Germany has a small Parliamentary Oversight Committee to provide intelligence oversight. Other democracies have similar effective yet secret processes. Nothing inherent in democracy or our desire for effective oversight requires that we periodically publicly cannibalize our intelligence processes or subject those who have served the nation to trial by television (the Tower Commission may well be correct that even our two select committees should be consolidated).

Underlying the mistake in investigating the Iran-Contra failure by public ad hoc Congressional Committee is a more pervasive problem. The framers intended that checks and balances apply to all branches, Congress included. While it is not clear in the Iran-Contra hearing that Congress has overstepped its legal bounds, it is dangerously close to usurping both executive functions in intelligence and judicial functions in assessment of any individual wrongdoing. Yet there seem to be few real-world checks on growth of legislative power in the foreign affairs field, and elsewhere Congress has passed laws, such as the War Powers Resolution, that are, at least in part, clearly unconstitutional. The growing confrontation across a broad range of foreign policy issues between Congress and the Presidency is increasingly harming the foreign policy effectiveness of the Nation. The problem is serious for effective American foreign policy and is getting worse. As one possible remedy I believe that the Congress and the President should establish a Congressional-Executive Commission, half appointed by Congress and half by the President, to review the full range of issues in Congressional-Executive coordination in foreign policy. Such a Commission should review not only the constitutional underpinnings and legal issues but issues of appropriate constraints on the exercise of Congressional power, particulary issues of effectiveness and effect on deterrence, and modalities of enhancing consensus between Congress and the President on a bipartisan basis. Whatever the resolution of the broader range of issues we should abandon the sad precedent of review of failed intelligence operations by public ad hoc Congressional Committee.

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*The writer is Walter L. Brown Professor of Law at the University of Virginia School of Law and a former United States Ambassador.

APPENDIX C

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

[illegible]

The Honorable Lee H. Hamilton
Chairman
Select Committee to Investigate Covert Arms
Transactions with Iran
U. S. House of Representatives
Room H-419 Capitol
Washington, D.C. 20515

Dear Mr. Chairman:

In a letter to the Attorney General of September 23, 1987, you solicited suggested changes in "law, policy or procedure" which might help avoid another Iran/Contra situation. We appreciate this opportunity to comment and to suggest a change which is not new, but which is especially propitious in view of the Iran/Contra matter and investigation.

The Congress should take one step which would decrease the likelihood of a recurrence. We believe that the creation of a joint Congressional Intelligence Committee, such as that proposed in both the 99th and 100th Congresses by Congressman Henry J. Hyde, would go far toward eliminating the environment which might contribute to a future Iran/Contra situation.

Reducing the total number of persons with access to classified information and storing that information in a single, secure repository would strengthen Executive branch confidence in the Congress' legislative role in the intelligence process. Congress, in turn, would clearly benefit from this increased confidence by the receipt of timely and detailed reports of intelligence activities, and a renewed ability for in-depth cooperation.

Aside from the establishment of a joint intelligence committee, the Department believes that the introduction of any other legislative measures is unnecessary. I hope you would agree that the Iran/Contra matter was an exceptional situation which lends scant support to the proposition that a massive revision of the intelligence statutes is required.

In addition, attempts to effect a wholesale revision of these statutes would require tremendous time and effort with no guarantee of beneficial results, as this is an area of constitutional law which remains uncertain at the core. In contrast, the creation of a joint intelligence committee is a practical measure which could be implemented swiftly and with obvious positive results. The Department of Justice is prepared to assist in whatever way we can in working with the Congress to establish such a committee.

Sincerely,

John R. Bolton
Assistant Attorney General

APPENDIX D

Lawrence L. Tracy
[redacted]

November 6, 1987

/S/

Representatives Lee H. Hamilton (D-IN) and
Dick Cheney (R-WY), Select Committee to
Investigate Covert Arms Transactions
with Iran, H-419, The Capitol,
Washington, D.C. 20515

Dear Sirs:

I write this letter to shed light on what I believe may be a relevant portion of your report on the "Iran-Contra" hearings--the work of the Office of Public Diplomacy for Latin America and the Caribbean at the Department of State. During the final days of the hearings, Congressman Dante Fascell (D-FL.) made a number of references to the Office, and later, with Congressman Jack Brooks (D-TX.), sponsored a report by the General Accounting Office (GAO) which made serious and erroneous accusations about the Public Diplomacy Office. As a former member of the Office, I want to set the record straight, and thereby help you in the preparation of your final report. Although I am currently doing consulting work for the Department of Defense, no one in the Administration has asked me to write this letter, and I have not cleared it with anyone in government.

Let me first establish my bona fides to comment on the GAO Report and the Office of Public Diplomacy. I was an army Colonel, assigned to the Office of the Deputy Assistant Secretary of Defense for Inter-American Affairs from June 1980 until December 1983. I was then assigned, at the request of the Department of State, to the recently-created Office of Public Diplomacy, where I served as Senior Defense Advisor to Ambassador Otto Reich until my retirement from active duty and departure from government in May 1986. During the 30 months that I was at the Department of State, I gave over 300 speeches on Central America, created the display of captured weapons and documents that President Reagan opened on March 13, 1986, and was the principal author of the Administration's two most widely-distributed publications, The Soviet-Cuban Connection in Central America and the Caribbean (the "Blue Book") and The Challenge to Democracy in Central America (the "Silver Book"). I also developed the now-famous slide presentation that Lt.Col Oliver North and others in government used extensively to brief the public.

The GAO Report, or Legal Opinion, makes the very serious charge that the Office of Public Diplomacy engaged in "prohibited, covert propaganda activities designed to influence the media and the public to support the Administration's Latin American policies". The evidence supporting this accusation is dubious, the methodology of the "investigation" questionable, and it is surprising that two experienced Congressmen would endorse such a flawed analysis. I will address the glaring errors of the report below, but I would first like to comment on the dangerous underlying assumption of the GAO finding, which appears to be that the Executive Branch has no right to inform the public of developments in the foreign policy sphere.

In a democracy, it is a fundamental responsibility of the elected leaders of the nation to keep the electorate informed of the dangers facing the country and the responses being taken by these elected leaders to solve such problems. If an Administration disseminates false information to the public, that is indeed propaganda, and the Congress and the media have a solemn responibility to do all in their power to put an end to such dishonest practices. But an intensive effort to inform the public is both a right and an obligation of any Administration, and it has been exercised frequently in the past. The GAO Report appears to be an attempt to limit this inherent right/duty of the Executive Branch.

An excellent example of an intense public diplomacy campaign carried out by the Executive Branch on a foreign policy problem was that conducted by the Carter Administration on the Panama Canal Treaty. President Carter felt deeply about the issue, and decided to go directly to the American people with his side of the controversial issue. It was a political success. Although many in this country disagreed with the Carter policy, I do not recall anyone in Congress calling on the GAO to investigate a "propaganda" effort. The public was well-served by the national debate that ensued, for the American people came to understand both the costs and the benefits of the Treaty, and were better able to advise their representatives in Congress of their position on the issue. That is the essence of democracy.

It was for the same objective--increasing public awareness of a critical issue--that the Public Diplomacy Office was formed in July 1983. It was clear to those of us working in Central American affairs that the public was not well-informed on the area, had little knowledge of U.S. policy objectives in Central America, and little awareness of the threat posed to U.S. security interests by Soviet expansionism in the region. It was concluded that we in the government were at fault, for we had failed to develop the means by which we could communicate the issue of Central America clearly to the American people. Hence the decision to create an inter-agency organization that would draw talent from throughout the Reagan Administration, with a presidential mandate to get the story to the American people of what was happening in Central America. The decision was made to place the organization in the State Department.

The Public Diplomacy Office did not engage in "prohibited, covert propaganda activities", as the GAO alleges, but did indeed carry out an aggressive campaign to increase public knowledge about Central America. As the debate over aid to the "Contras" intensified, so did our efforts to let the public know who these young Nicaraguans were, why they were fighting, and what the consequences could be for U.S. security if the Soviet Union succeeded in establishing a "Cuba" in Central America. Even critics of the Administration acknowledge that the Office performed effectively, and I am proud of the role I played in helping to educate the public of the dangers faced by this country because of Soviet ambition and Sandinista duplicity.

Given the criticism of the Office by the GAO, perhaps we did too good a job, as there are apparently some in Congress who wish to keep the public in the dark. Having travelled throughout this country speaking on Central America, I can assure you that the American people want more, not less, information about a region they know intuitively could soon become a battlefield for their sons. The respected Roosevelt Center for American Policy Studies, in its 1987 study, Trouble at our Doorstep, found that the American people believe that neither the government nor the media are providing them with sufficient information upon which they can make common sense judgements about Central America.

The Congress has been unswerving in its declarations that U.S. interests cannot be permitted to be threatened by a permanent Soviet military presence in Central America. Having served in Vietnam, I certainly do not want to see young Americans fight and die in Central America in the future because the Congress is unwilling to send arms to young Nicaraguans who are willing to fight for their country, and thereby fight our battle for us.

The GAO Report apparently was inspired by the discovery of a memo written in March 1985 by Jonathan Miller of our Office to Pat Buchanan in the White House, in which Miller spoke of a "White Propaganda" campaign. Among the triumphs for the Office, according to the memo, were the placing of an article by Dr. John Guilmartin of Rice University in the Wall Street Journal, and arranging a favorable story on the "Contras" by Fred Francis of NBC. The GAO concluded from this memo, apparently without checking with either Guilmartin or Francis, that this constituted "covert propaganda".

Had the GAO looked beyond the memo, the investigators would have discovered that Dr. Guilmartin, as Lt. Col. Guilmartin, had been one of the United States Air Force's leading authorities on helicopter doctrine and tactics, and that any newspaper would have been happy to publish his expert opinion on the military implication of the delivery of MI-24 HIND D gunships by Moscow to the Sandinistas. As a consultant to the Public Diplomacy Office, he had done a superb study for us on the subject, and submitted the Op-Ed piece to the Journal on his own, with no help asked or required from us. The allegation that we helped Fred Francis establish contacts with "Contra" leaders is laughable. Fred is one of the best connected reporters in Washington, with far better and more extensive contacts with the the "Contra" leadership than anyone in the Public Diplomacy Office. He required no help from us.

Why did Miller include such statements in his now-celebrated memo to Buchanan? He was probably exaggerating our accomplishments in an effort to curry favor for the Office with the White House, not an uncommon tactic in the bureaucratic battles of Washington. Jonathan has a sardonic sense of humor, and he may have been "just kidding", as he told Ambassador Reich in October 1987 (See Washington Post, October 11, 1987). Certainly, a memo of this nature could be perceived as a "smoking gun", but it should have been the beginning, not the end, of the investigation trail. The GAO appears to presume guilt, then looks for "facts" to fit the a priori assumption.

Media accounts claim that the State Department and Secretary of State George Shultz were not happy with the Public Diplomacy Office because it supposedly took orders from the National Security Council, not the Department Of State. The Office was an inter-agency creature, and certainly had close, almost daily contact with the NSC. But we worked within the State Department, and no one in the Office ever had any doubt but that we worked for George Shultz.

There was probably resentment on the part of some in the Department about the creation of the Office, for it implied that the traditional means of informing the public about foreign affairs--the domain of the State Department's Bureau of Public Affairs--had been found wanting. At the working level, however, we found little hostility, and in fact the Foreign Service Officers working the Central American issue were happy to see an intensive campaign mounted to tell the public the truth about Nicaragua, and of Soviet and Cuban efforts to neutralize the United States by creating a state of perpetual crisis in the Western Hemisphere. It is doubtful that Otto Reich would have been appointed to the prestigious and critical post of Ambassador to Venezuela if he had displeased the Secretary of State by doing an end run to the NSC. Shultz, in fact, made it a point to swear Otto in as Ambassador to Venezuela personally, somewhat of a rarity for the Secretary.

In closing, let me say that it would be a setback for our form of participatory democracy if a future President of either party is precluded from telling the American people what threats his Administration perceives, and what responses are being taken to meet these challenges. I hope your Committee encourages, rather than discourages, the maximum flow of information to the public about Central America. Legislative muzzling of the Executive Branch will weaken our democracy, which must be based on an informed and articulate electorate.

Sincerely,

Lawrence L. Tracy
Colonel, U.S. Army (Ret.)

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W. NEIL EGGLESTON, DEPUTY CHIEF COUNSEL
CASEY MILLER, STAFF DIRECTOR

U.S. HOUSE OF REPRESENTATIVES
SELECT COMMITTEE TO INVESTIGATE
COVERT ARMS TRANSACTIONS WITH IRAN
UNITED STATES CAPITOL
WASHINGTON, DC 20515
(202) 225-7902

DICK CHENEY, WYOMING
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GEORGE VAN CLEVE, CHIEF MINORITY COUNSEL
RICHARD LEON, DEPUTY CHIEF MINORITY COUNSEL

July 23, 1987

MEMORANDUM

TO: Chairman Hamilton
John Nields

FROM: Robert A. Bermingham

RE: Allegations Re: Contra Involvement With Drug Smuggling

Synopsis

Our investigation has not developed any corroboration of media-exploited allegations that U.S. government-condoned drug trafficking by Contra leaders or Contra organizations or that Contra leaders or organizations did in fact take part in such activity. The Select Committee on Narcotics Abuse and the Crime Subcommittee of the Judiciary Committee have been conducting investigation in this area, but, to date, have not developed concrete evidence. The Crime Subcommittee and the Senate Foreign Relations Committee are continuing their inquiries, as is the Special Counsel. It is recommended that after coordination with Chairman Innouye, the Joint Committee issue a statement to the above effect and pledge cooperation with the Senate and House ongoing investigations.

Details

During the course of our investigation, the role of U.S. government officials who supported the Contras' and the private resupply effort, as well as the role of private individuals in resupply, were exhaustively examined. Hundreds of persons, including U.S. government employees, Contra leaders, representatives of foreign governments, U.S. and foreign law enforcement officials, military personnel, private pilots and crews involved in actual operations were questioned and their files and records examined. Despite numerous newspaper accounts to the contrary, no evidence was developed indicating that Contra leadership or Contra organizations were actually involved in drug trafficking. Sources of news stories indicating to the contrary were of doubtful veracity. There was no information developed indicating any U.S. government agency or organization condoned drug trafficking by the Contras or anyone else.

The scope of our investigation does not specifically include determining whether the Contras have been independently or individually involved in drug trafficking. The Senate Foreign Relations Committee, particularly Senator Kerry; the House Select Committee on Narcotics Abuse and Control under Rep. Rangel; and the Crime Subcommittee under Rep. Hughes of the Judiciary Committee, have been looking into this specific subject for some time. They have travelled to Central America, interviewed witnesses there and in Miami and have held hearings. Rep. Rangel is quoted in the Washington Post, 7/22/87, as stating his investigation, which started in June of 1986 and includes reams of testimony from hundreds of witnesses, developed no evidence which would show that Contra leadership was involved in drug smuggling. His Committee is to give its information to the Crime Subcommittee of the Judiciary Committee which will continue to investigate whether U.S. government officials deliberately ignored drug dealing by individuals who carried supplies to the Contras. The Judiciary has engaged a Miami-based investigator.

DEA and Justice have issued statements disclaiming any concrete evidence of such activities by U.S. government officials, Contra leaders or Contra organizations.

Dave Faulkner, Investigator, Senate Select Committee, advised that the Senate investigation was also substantially negative with regard to Contra drug smuggling. On 7/21/87, Faulkner and the writer conferred with Hayden Gregory, Counsel, of the Crime Subcommittee of the Judiciary. He confirmed that his committee has been and continues to investigate the question of U.S. government-sponsored Contra organizations being involved in drug smuggling. His investigation, including interviews in Central America and Miami of many of the persons named in the newspapers as suspects, has been inconclusive to date. He confirmed that several of those involved have also been questioned or deposed by the ongoing investigation by

Senator Kerry. Gregory confirmed the newspaper account that Representative Rangel's committee is deferring to the Judiciary in this matter. He also stated he has, to date, developed no pertinent information above the level of "street talk".

During the course of our investigation, we examined files of State, DoD, NSC, CIA, DEA, Justice, Customs and FBI, especially those reportedly involving newspaper allegations of Contra drug trafficking. We have discovered that almost all of these allegations originate from persons indicted or convicted of drug smuggling. Justice has stated that such persons are more and more claiming, as a defense, that they were smuggling for the benefit of the Contras in what they believed was a U.S. government-sponsored operation. Typically, they furnish no information which can be corroborated by investigation. In addition to the above-mentioned negative file reviews, interviews with employees of these U.S. agencies have also been negative.

Contra leaders have been interviewed and their bank records examined. They denied any connection with or knowledge of drug trafficking. Examination of Contra financial records, private enterprise business records and income tax returns of several individuals failed to locate any indication of drug trafficking.

It is known that the Special Counsel is looking into this area and that the FBI has pending investigations regarding similar allegations.

Conclusion

It is felt that additional investigation of these allegations is unwarranted in view of the negative results to date, the questionable reliability of the accusers, the fact that two Congressional committees are already deeply involved in such investigations and that the matter is currently under investigation by the Special Counsel.

REPRESENTATIVES	SENATORS
Dick Cheney Dick Cheney	James A. McClure James A. McClure
Bill Broomfield William S. Broomfield	Orrin Hatch Orrin G. Hatch
Henry J. Hyde Henry J. Hyde	
Jim Courter Jim Courter	
Bill McCollum Bill McCollum	
Michael DeWine Michael DeWine	

Members, House Select Committee to Investigate Covert Arms Transactions with Iran

Members, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition

Section III

Supplemental and Additional Views

Additional Views of Chairman Daniel K. Inouye and Vice Chairman Warren B. Rudman

We wish to acknowledge the bipartisan spirit that characterized our Committee's work and resulted in a Report signed by all of the Democrats and a majority of the Republican Members of the Senate Select Committee. We wish also to recognize the outstanding leadership of our distinguished colleague, Representative Lee Hamilton, Chairman of the House Select Committee.

Tragedies like the Iran-Contra Affair unite our Government and our people in their resolve to find answers, draw lessons and avoid a repetition. In investigations of this magnitude—which involve serious questions relating to the proper functioning of our Government—it is just as important to lay aside partisan differences and avoid unjustified criticisms as it is to make the justified criticisms set forth in the Report. In that spirit, we wish to recognize the cooperation that we received from the White House throughout this inquiry.

Once our investigation commenced, the White House rose above partisan considerations in cooperating with our far-reaching requests and in ensuring the cooperation of other agencies and departments of the Executive Branch. We dealt primarily with three Counsels to the President: David M. Abshire (Special Counsellor to the President), Peter Wallison (White House Counsel), and, for most of the period, Arthur B. Culvahouse, Jr. (White House Counsel), and his deputies, William B. Lytton III, Alan Charles Raul and Dean McGrath. Our experience was the same with all. They tried their best to accommodate our demanding requests, to iron out differences, and to meet our short deadlines in a spirit of cooperation and good faith. Consequently, in compliance with our requests, over 250,000 documents were produced by the White House alone; additional large quantities of material were produced by other Executive Branch agencies and departments; and relevant personnel and officials throughout the Executive Branch, including Cabinet officers, were made available for interviews, depositions, discussions, and assistance in facilitating our work

Although the House and Senate Select Committees consolidated their investigations and hearings, the two Committees nevertheless had their own separate staffs, styles, requirements, perspectives and experience. Speaking for the Senate Committee's experience, we can state that, despite some differences and some compromises, all of our requests to the White House and the Executive Branch were fulfilled. The White House pledged to cooperate with this investigation; and it did.

One of our requests was for excerpts from the President's diaries. Those of us who keep diaries appreciate the intensely personal and private nature of the entries we make in such books, confiding our innermost concerns, aspirations and thoughts. We can therefore understand the profoundly difficult and personal nature of a decision to share those private entries with others. The President made that decision in this investigation. Because of the importance we attached to the President's diary entries, we asked for them. Because of our respect for personal privacy, we agreed not to publish or paraphrase them without the President's consent.

At our request, and unlike the procedure followed by the Tower Board, the White House Counsel personally reviewed all of the President's handwritten diaries from January 1, 1984 through December 19, 1986, and represented to us that he had copied all relevant entries. This procedure resulted in far more complete production than the Tower Board requested, and the results were important to our investigation. We were able to draw on the diaries in reaching our conclusions; and we do not fault the President for his decision that the entries themselves, none of which alter the conclusions in this Report, should not be paraphrased in this Report.

In addition to his own diary notes, the President instructed all other Executive Branch officials to make their relevant records and notes available to the Committees. These included the contemporaneous handwritten notes made by the Secretary of State's Executive Assistant, describing, among other things, blunt private conversations between the Secretary of State and the President. As Secretary Shultz testified, it was the President's decision that this material, which played a significant role in our inquiry, be made available to the Committees, even though, in the Secretary's words, "I have always taken the position in 10-1/2 years as a member of the Cabinet that these conversations [with the President] are privileged, and I would not discuss them. This is an exception, and I have made this material available at the President's instruction. . . ."

It has been asserted that the White House and a number of other executive agencies on several occasions delayed production of documents to such an extent that materials could not be reviewed in time for witness interviews or public testimony. Again, that was not our experience, although we sometimes set deadlines for production of documents that proved impossible to meet. Further, it is a misconception that the Committees did not receive access to Admiral Poindexter's telephone logs until after Colonel North had testified. The Senate Committee received access to those logs approximately one month before Col. North testified, and prior to the three sessions of Admiral Poindexter's deposition commencing June 17. Moreover, we were able to use the logs with Admiral Poindexter at the June sessions of his deposition even though the Independent Counsel objected, understandably, to our showing the logs to Admiral Poindexter (as we did) during his examination.

There is one open matter, relating to a request by the Committees for a computer "dump" of certain data in the NSC's "PROF" message system. (See the discussion under "Pending Request" in Appendix C; and see the Additional Views submitted by Hon. Peter W. Rodino, Jr., M.C., for himself and 6 other Members of the House Select Committee.) We wish to stress the following facts on that matter.

First, the request for the computer "dump" was not made by the Committees until after the hearings ended, in August. The request was accompanied by a number of other, quite extensive demands, seeking, among other things, a re-review of files that previously had been searched on behalf of the Independent Counsel and the Committees, and setting a short deadline for compliance. We wanted to leave no stone unturned. The White House Counsel responded to all of these requests in a September 4 letter which is only quoted partially in Appendix C and in the Additional Views of the 7 House Committee Members, but which also stated:

> All of the documents have been reviewed several times by the FBI and we simply see no useful purpose in going through this exercise again. . . . We have fully complied with our responsibility by identifying and providing all responsive documents
>
> . . . .
>
> We are not trying to be obstructive in any way. We have spent many thousands of man hours over the last nine months responding to your many requests for information. We have produced some 250,000 pieces of paper. We have declassified almost 4,000 documents. We have facilitated the interviews, depositions and testimony of hundreds of Executive Branch employees.

That requests framed so broadly drew objections would not be surprising to any investigator; and we at least anticipated that there would be good faith negotiations to narrow the requests so that we would obtain access to what we really wanted, but could not precisely define without discussions with the White House Counsel. That dialogue took place.

Second, after those discussions, the White House Counsel agreed to permit the Committees to obtain the deleted PROF messages pursuant to a computer program that the Committees' experts were confident they could create. The White House thus agreed in September to give the Committees what they asked for—the deleted messages. Unfortunately, the Committees' original computer experts were unable to develop a computer program that would retrieve the material. The Committees then engaged a new expert, who believes it has now developed the appropriate retrieval program. The White House cooperated with the Committees' experts in providing information and personnel to facilitate the development of the requisite computer program; and the White House agreed to produce the relevant retrieved entries even after this Report is filed.

Third, as the Committees note in Appendix C, "There is no assurance that the material extracted [as a result of the "dump"] will be anything more than fragments, and even the fragments may be unrelated to any matters under investigation." A sample "dump" performed by the White House pursuant to specifications of the Committees' experts did not yield any new information.

Fourth, because nobody has any reasonable expectation that the computer "dump" will produce any new information, no Member of the House or Senate Select Committees requested or suggested that the Report be delayed pending the outcome of the computer "dump," although we delayed our Report for other reasons. Nevertheless, in the interest of completeness, we have asked that the "dump" be produced after the Report is issued even if it yields, as White House Counsel believes (based on information from his computer personnel), only free-floating fragments and "computer gibberish."

Finally, all of the Members of our Committee wish to note that, in connection with the computer "dump" request, as with all other of our requests throughout the investigation, the record has been one of cooperation by the White House and the Executive Branch — a record which we hope will serve as precedent for future Administrations.

Additional Views of
Honorable Peter W. Rodino, Jr.,
Honorable Dante B. Fascell, Vice Chairman,
Honorable Thomas S. Foley,
Honorable Jack Brooks, Honorable Louis Stokes,
Honorable Les Aspin,
and Honorable Edward P. Boland

We have all joined in voting for the joint Report of the Select Committees, and wish to commend the Chairmen and the staff for their extraordinary efforts in assembling the voluminous factual information gathered during our investigation and crafting it into a fair and credible report. Obviously, it would have been impossible to draft a report with which all the Members of the Committees would have agreed in every particular; the subject is far too complex, the information subject to too many different shadings, and the unresolved questions too numerous to expect unanimity. Nonetheless, we wish to emphasize our strong support for the Report in general and for the work of the leadership of the Committees in producing a document that a majority of Members could endorse.

We would emphasize, however, that the Report is based solely on the documents, testimony, and other information available to the Committees. Unfortunately, not all information requested by the Committees was in fact made available, and this has deprived us of material that quite possibly could resolve a number of key issues.

Along this line, we are therefore submitting these additional views in order that the public record be absolutely clear with respect to the production of materials by the White House. For, despite its repeated public assurances, the White House did not provide the Select Committees with all the documents and information requested in the past months.[1] Of paramount concern to us is the outright refusal of the White House to provide certain critical computer records possibly containing directly relevant information on some of the remaining key unresolved questions of the Iran-Contra episode. Experts from Price Waterhouse, hired by the House Committee, met with White House communications specialists and, after some study, concluded that more information could be in the White House computer system that had not yet been produced. Much of this information was previously thought to be destroyed, but, according to our experts, could still be retrieved.

White House Computerized Documentation

On August 7, 1987, after public hearings were concluded, Chairman Hamilton wrote to the White House stating that our investigation was continuing and requesting White House information stored in the computer system.[2] On August 31, 1987, the House Select Committee sent a more detailed letter listing a number of priority steps required in the review of White House and NSC computer records.[3] On September 4, 1987, White House Counsel Culvahouse responded, stating that "We cannot and will not be able to meet that [September 4] deadline" for producing the materials requested by the Committee on August 31.[4] Culvahouse cited time constraints and previous White House compliance with Committee requests, and added that portions of the request had "no apparent legislative purpose and appear to be more appropriate for a prosecutor's request."[5] Culvahouse concluded as follows:

> In view of all of these factors, and with a due regard for protecting sensitive national security information unrelated to the Committee's investigation, separation of powers principles and the Constitutional prerogatives of both the Legislative and Executive Branches, I respectfully recommend that the Committee reconsider its requests and focus on those tasks that both are relevant to the performance of its legitimate legislative function, and which, in view of the fact that the Select Committees' report will be issued next month, are possible to accomplish in a timely fashion.[6]

Mr. Culvahouse's response flies in the face of the President's promises of complete cooperation. The suggestion that the White House computer records should not be produced in order to protect "national security information" and because of "separation of powers principles and Constitutional prerogatives" [read: "executive privilege"] is completely without merit[7] and raises legal arguments that have long since been discredited.

It is for the Select Committees, not the White House, to determine what documents and information are "relevant" and needed to fulfill our "legitimate legislative function." In this instance, the relevance of the White House computer records simply cannot be questioned. In its August 31, 1987, letter, the House Select Committee requested that certain specific computer "dumps" be performed by the White House in order to retrieve information from the computer system.[8] These included the following key materials that were *not* produced:

1. PROF Notes

Admiral Poindexter testified that he had deleted PROF messages that he wrote from his computer. As the Committee's experts discovered, however, Poindexter could have deleted his PROF messages from his computer screen, and the messages would not have been deleted from the system itself—only from the user's screen. Therefore, although Poindexter thought he had deleted the messages from the system, he had not. Obviously, the messages that he purposely deleted from the directory are of critical importance to the Committees. Presumably, Poindexter did not destroy irrelevant messages.

The Committees also discovered that the White House reviewed all "live" PROFs only for North and Poindexter, and conducted only a more limited review of PROFs for other NSC staff. It is entirely possible that two additional categories of messages that were not provided are retrievable from the system: (1) PROFs deleted by North and Poindexter sent to others on the system; and (2) "live" or deleted messages to or from users other than North and Poindexter not discovered by the more limited review.

After the White House refused to "dump" all of the live and deleted material from the PROF notes of the principals in this investigation, the Committee sought alternatives. Its experts attempted to devise a program that would separate out the deleted materials and retrieve them in a readable format. In order to write the program, the experts asked the White House for access to the NSC system in order to understand the system and to facilitate the writing of the program. Again, the White House refused, on national security grounds.

That left the experts with no choice but to go to outside system programmers to try to recreate the system in order to write the program. Without the on-site inspection of the White House system, and the initial participation of an expert who actually worked the system, what would ordinarily have taken only a matter of hours or days took weeks to try to solve. As of the time of this Report, a working program still has not been completed; moreover, there is no guarantee that the finished program will actually function in the White House system.

Therefore, although the Committee made a valiant effort to retrieve PROF notes that could be critical to the investigation, the lateness of the discovery that materials could possibly be retrieved from the White House computer, combined with the lack of White House cooperation, made the Committee's task impossible. As a result, the documentary record is not complete and our conclusions are qualified.

2. Diskettes

Many critical documents, including the key diversion memorandum, were typed on word processing equipment that utilized diskettes. Fawn Hall stated that she used these diskettes to alter some documents on November 21, 1986. In fact, the diversion memorandum itself was found on Hall's diskettes. However, the Committee never received any diskettes so that it could run a complete print-out of all the documents or data on them. A full print-out could have disclosed all documents typed onto the diskettes, even if they had been deleted from the user's directory. The original diskettes are in the joint custody of the Independent Counsel and the White House. Although the Committee apparently received a written inventory of over 90 diskettes and relevant documents printed from the diskettes, this production did *not* include deleted material. Without that information, it is impossible to say that there were not other diversion memoranda or other pertinent documents.

3. Other Systems

The Committee learned that some NSC employees had access to other computer systems, including microcomputers and a VAX minicomputer system. Although the White House stated that the key NSC employees either did not have these computer systems or did not use the systems because they were so new, the Committee did request a list of users and inventory to determine whether the principals of our investigation had access to these systems. The Committee also requested a briefing on the NSC "flashboard" system that transmitted messages within the NSC. These requests were not granted.

Section III (Minority)

1. Because of President Reagan's personal promise that the executive branch would fully cooperate with the Committees in their investigation, the Committees did not issue subpoenas to any person or agency of the executive branch. However, the White House and a number of executive agencies either belatedly produced or withheld information requested by the Committees. This delayed production, nonproduction, and non-compliance with Committee requests made witness interviews difficult, made it necessary that some witnesses be re-interviewed, and complicated the Committees' preparation for public hearings.

2. Letter from Lee H. Hamilton, Chairman, to Arthur B. Culvahouse, Jr., Counsel to the President, August 7, 1987.

3. Letter from John W. Nields, Jr., to Alan Raul, Associate Counsel to the President, August 31, 1987.

4. Letter from Arthur B. Culvahouse, Jr., to John W. Nields, Jr., September 4, 1987, at 2.

5. *Id.*

6. *Id.*, at 3.

7. For example, all staff members of the Select Committees had the necessary security clearances to review all documents relevant to our inquiry.

8. The computer experts employed by the Committee estimated that it would take only one day to perform the requested "dumps."

PETER W. RODINO, Jr.
JACK BROOKS.
EDWARD P. BOLAND.
THOMAS S. FOLEY.
LES ASPIN.
DANTE B. FASCELL.
LOUIS STOKES.

Additional Views of
Honorable Peter W. Rodino, Jr.,
Honorable Dante B. Fascell, Vice Chairman,
Honorable Jack Brooks,
and Honorable Louis Stokes

We support the joint report of the Select Committees and are pleased that a bipartisan majority of Members of the House and Senate voted to adopt it. In particular, we wish to commend the Chairmen of the two panels for their fair and impartial leadership during the investigation and for their efforts to produce an objective report based on the facts we discovered. We also believe it is important to take note of the painstaking, professional work of the staffs of the Committees over the past several months. They have done an extraordinary job in preparing for and guiding us through the public hearings, and in assembling the massive amount of information the Committees gathered into a comprehensive and readable report.

While we support the Committees' report, we are including in these views some additional comments on the difficulties caused by delayed document production by the executive branch, on the Attorney General's role in the Iran-Contra matter, and on NSC involvement in criminal investigations and prosecutions.

Unresolved Questions, Missing Documents, Unexplored Leads

Quite obviously, the Committees were not able definitively to answer every question about the Iran-Contra episode, particularly with respect to the roles of the President and his top advisers. Many of these gaps in the Report were beyond our control; the death of CIA Director Casey, the destruction of key pieces of evidence by Admiral Poindexter, Colonel North and his secretary, and the failure of many witnesses to recall central events deprived us of much vital information and made it virtually impossible completely to reconstruct what happened.

However, two other factors also affected our ability to follow leads and strengthen the factual record. First, setting a deadline by which our Report was to be completed was a decision of enormous magnitude and appreciably complicated our task. Second, because of President Reagan's personal commitment that the executive branch would fully cooperate with the Committees, we did not issue subpoenas to any person or agency in the executive branch. However, the White House itself and a number of other executive agencies on several occasions refused to produce documents or delayed production to such an extent that the materials could not be reviewed in time for witness interviews or public testimony.

For example, on January 20, 1987, the Select Committees initially requested all Department of Justice documents relating to the Iran-Contra matter. After that request, the Committees sent at least five additional letters to the Department prior to the Attorney General's scheduled appearance on July 28, 1987, seeking production of documents. Yet, many requested documents were still withheld, and other material was produced only in heavily redacted form. Still other material was made available only within days of Mr. Meese's scheduled appearance, making preparation for his testimony difficult. It was not until July 17, 1987—two months after the public hearings began—that the House Select Committee was given access to the Attorney General's unredacted logs and calendars. At that time, the Committee was presented with approximately five full boxes of materials that the Department had previously refused to produce. Among other items, the staff review revealed:

> —A handwritten log of Mr. Meese's calls on November 24, 1986, two days after his aides had discovered the diversion memorandum and one day after his interview with Colonel North. This log, which had not been provided at all, included phone calls at this critical time to Donald Regan, the Vice President, Robert McFarlane, and John Poindexter. A handwritten telephone log of Mr. Meese's calls on November 26, 1986, was also discovered, which had been withheld. Included on it were the following phone calls: three with

Director Casey, one with Donald Regan, one with Ross Perot and one with Judge Webster.

—Other records of phone calls that were either withheld or redacted included Mr. Meese's phone calls with Admiral Poindexter, Colonel North, Terry Slease, Ross Perot and others.

Even after the July 17 document review, entire categories of Justice Department documents still had not been produced. After the Committee yet again requested the materials, the Department produced a two-foot high stack of documents, in redacted form, on Friday night, July 24, 1987, just four days prior to Mr. Meese's testimony.

In late October 1987, the Department gave the Committee access to certain relevant Drug Enforcement Administration documents that had repeatedly been requested—without success—over the previous months. The Department did not advise the Committee in advance that most of the documents were in Spanish and that a translator would be necessary. Consequently, when a Committee counsel went to the Department to review the materials, they could not be read. And the Committees never received copies of the documents or translations.

There were a number of potentially fruitful leads that could not be followed because of delayed document production and time constraint difficulties. For example,

—Film producer Larry Spivey stated to the FBI, and confirmed in his interview with the House Committee staff, that in early 1985 North told him that, during a meeting with Attorney General Smith and Robert McFarlane, President Reagan stated that Tom Posey, under investigation by the FBI for his Civilian Military Assistance activities, should never be prosecuted and was a "national treasure." Spivey also told the House Committee that North told him in early 1985 that he (North) could go to jail for violating the Boland Amendment so he was going to "lay low" until Ed Meese became Attorney General. As of the date of the filing of these views, these statements had not been investigated.

—The Committees did not receive Admiral Poindexter's telephone logs until after Colonel North had testified. North could not be questioned about the calls, rendering it impossible to investigate completely all their conversations.

—As noted above, the Committees received access to Mr. Meese's telephone logs only in late July. A number of key individuals, whose names were reflected on the logs, had already been interviewed by that time, and following all the leads generated by the logs would have required re-interviewing witnesses. In the main, this was not done. For example, Ross Perot called the Attorney General the day after the diversion was announced. Perot was never questioned about that conversation.

—A complete set of Chief of Staff Regan's notes were not reviewed by the Committees until September. They revealed a conversation between Perot and Regan in December 1986 in which they discussed the possible testimony of North and Poindexter. By the time the Committees learned of the notes, it was too late to investigate the conversation.

These are examples of areas that Independent Counsel Walsh and the standing Committees of the House and Senate may wish to pursue.

The Actions of the Attorney General

The Attorney General's actions in this matter take on a particular importance because of his preeminent position in our Government. As the chief law enforcement officer of our country, he bears a special responsibility—not only to uphold and defend the Constitution, but also to assist the President in seeing that our laws are faithfully executed. In order to discharge that responsibility, the Attorney General must be independent, impartial, and aggressive in seeking the truth.

Yet, when one reviews the Attorney General's conduct during the Iran-Contra episode, it is impossible to avoid questions about his actions. Some of these questions relate to the legal advice he rendered, some involve his knowledge of the underlying events prior to the time he began his November 1986 "inquiry," and some relate to the "inquiry" itself.

Several areas are of particular concern:

The record indicates that the Attorney General's legal advice on the 1986 Iranian arms sales was based not on his extensive research, but only on his awareness of a cursory 1981 William French Smith opinion and limited reading of the relevant statute and annotations. It was not until nearly a year after the President signed the January 1986 Finding on the arms sales that the Office of Legal Counsel was finally told to prepare the legal memorandums on the sales and Congressional reporting requirements. At that point, the Department's work appeared to be more a justification for what had already taken place than an independent analysis of what the law required. Clearly, the Attorney General owed the President a thorough analysis of the legal issues involved in the arms sales before the President moved ahead on his policy.

One also has to wonder about the fact that the Attorney General expressed no surprise at, and asked no questions about, the proposal to sell arms to Iran when he was presented with the draft January Finding—as Colonel North testified. If he was unaware of the 1985 pre-finding shipments—as he has claimed—it is difficult to understand how the Attorney General would make no comment or raise no questions when confronted with the startling revelation that arms were to be sold to Iran—an action in direct contradiction to the President's oft-stated policy.

Mr. Meese insisted that he did not know of the pre-finding arms shipments until November 1986. The first he could recall being told about the shipments was during a meeting at the White House on November 10, 1986, at which Chief of Staff Regan took detailed notes. During that meeting, Secretary Weinberger warned: "what we say will be repudiated," to which Attorney General Meese replied: "We are saying only what we did and know has happened, no violation of laws and policy." This statement was made eleven days before the Attorney General began his fact-finding inquiry. This certainly creates the appearance that the Attorney General had already reached his legal conclusions before he even had the facts.

Mr. Meese's November 21-25, 1986 inquiry was the focus of considerable attention by Committee Members during our public hearings. For this inquiry—a task ordered by the President—Mr. Meese chose to use friends and political allies rather than experienced career investigators and staff members of the Department's Office of Intelligence Policy and Review. As Mr. Weld's deposition makes clear, the Attorney General also rejected a request by the head of the Department's Criminal Division—which already had an investigation underway as a result of an independent counsel request from the House Committee on the Judiciary—to review the facts in this matter. Mr. Meese failed to utilize the FBI and to take steps to preserve relevant documents. In fact, Justice Department officials did not even review all the materials made available to them in NSC offices during the key weekend. Mr. Meese informed senior White House officials a day in advance of the impending document review and immediately thereafter they destroyed relevant files. Because of this, many of the most central documents in this entire episode have been altered or destroyed, almost certainly guaranteeing that we will never know the complete truth about what transpired. According to Colonel Earl's sworn deposition, Colonel North told him that the Attorney General and he had actually discussed whether North would have "24 or 48 hours" before an investigation was begun.

Mr. Meese's essential response to these criticisms was that he was not conducting a criminal investigation as the Attorney General, but a "fact-finding inquiry" as an "adviser to the President." Moreover, he stated, he had no basis on which to believe there were any criminal violations involved. We do not believe that the factual record supports these assertions.

Mr. Meese cannot avoid his responsibilities as Attorney General simply by calling himself something else. He is the Attorney General. He was nominated by the President and confirmed by the Senate for that job. Mr. Meese's role as adviser to the President is not separate from that as Attorney General—it is derived from it. He remained the Attorney General while he was conducting his inquiry for the President. And it was necessary for those who were the subjects of his inquiry to understand that they had an obligation to tell him the truth, precisely because he was acting as the chief law enforcement officer of the country. To the extent he conveyed a different impression, he served neither the President nor his office well.

The Attorney General's contention that he had no reason to believe there was any possible criminality involved is belied by the facts. Leaving aside the possibility that, even prior to November 1986, Mr. Meese may have had a far greater understanding of the Iran–Contra matter than we have been led to believe, the information that he possessed at the beginning of the inquiry was more than sufficient to require the involvement of the Criminal Division. For example:

—Mr. Meese knew that the Criminal Division was already conducting an inquiry into the involvement of the Vice President, Secretary Weinberger, CIA Director Casey, Admiral Poindexter, and Colonel North because of a House Judiciary Committee independent counsel request made after the Hasenfus crash. All of these individuals were on Mr. Meese's list of proposed interviews put together at the beginning of his inquiry.

—Mr. Meese knew that efforts had been made to submit false testimony to Congress. On November 20, 1986, the Attorney General was present at a meeting of senior officials at the White House at which CIA Director Casey's proposed testimony to the Intelligence Committees was discussed. Later that evening, Mr. Meese learned that the changes to Casey's testimony made at that meeting were incorrect. This was not a mere dispute over the facts; it was of sufficient import that the chief legal officer of the State Department threatened to resign if the testimony was not corrected. On the evening of November 20, the Department of Justice was told of documentary evidence contradicting the proposed testimony, and no later than 8:30 a.m. on November 21, the Department was advised of further information suggesting that certain statements were false. An experienced investigator would have at least suspected a possible cover-up.

—Notations included with notes of a meeting Mr. Meese attended on the afternoon of November 21 indicate that Department officials discussed the possible diversion of TOW missiles to the Contras.

—Also on the afternoon of November 21, Mr. Meese interviewed Robert McFarlane, and concerns were raised about the legality of the 1985 arms shipments to Iran. These concerns should have been heightened the next morning when CIA General Counsel Sporkin told Mr. Meese about the December 1985 finding retroactively validating arms shipments, an action of dubious legitimacy.

—On Saturday morning, November 22, Mr. Meese interviewed Secretary of State Shultz. According to his testimony and the notes of his assistant who was present at the interview, Mr. Shultz expressed concern about the relationship between the Iran arms sales and the Contras because of the involvement of Southern Air Transport in both projects. The possibility of such a relationship should have been reinforced in the Attorney General's mind since he also knew that (1) Colonel North handled both the Iran and Contra accounts at the NSC and (2) Admiral Poindexter, who was involved in the arms sales, had previously called him to delay the Southern Air Transport investigation on the basis of the Iran situation.

—Finally, at lunch on November 22, Mr. Meese learned of the diversion memorandum.

Despite this information—and additional evidence the Attorney General received in the following days—he still took no steps immediately to call in the Criminal Division or preserve the relevant documents. In fact, letters were not sent to the key agencies and departments, including the White House, telling them to segregate and protect their documents, until November 28—six full days after the diversion memorandum was discovered. In the interim, as the press had already reported, Colonel North had destroyed crucial NSC documents.

Mr. Meese also did not interview key witnesses promptly, nor did he seek to preserve independent recollections by preventing potential witnesses from contacting each other to synchronize their versions of events. Many key individuals were not interviewed at all; others were interviewed, but, for unexplained reasons, were not asked obvious—and crucial—questions. Mr. Meese left in the middle of the North interview; he interviewed Poindexter alone in his office for five minutes, did not show him the diversion memorandum, did not specifically ask him about the President's role or other key questions, and took no notes; he interviewed Vice President Bush alone for a matter of minutes and took no notes; he only spoke briefly with Secretary Weinberger by phone, and he did not interview Director Casey because he said he was certain Casey was not involved and thought he already knew what Casey's answers would be to the questions he never asked.

The President had directed the Attorney General to find the facts. The American people expected the facts. Neither was served by an inquiry that left key questions unanswered.

Moreover, on several fronts, the Attorney General's statements are not convincing. For example, Mr. Meese testified that Director Casey was not involved in the diversion, and that he and Casey did not discuss the diversion until November 25, at which time Casey argued that all the information should be made public.

Yet the Attorney General and Director Casey had a close personal relationship. In the July 14, 1980, edition of the Washington Star, Mr. Meese is quoted as stating: "I discovered Casey." Mr. Meese and Casey worked together in the Reagan presidential campaign and Mr. Meese testified that he and Casey were personal friends and that their professional and social relationship brought them into contact frequently. Mr. Meese's logs and calendars reflect numerous calls and meetings with Mr. Casey over the years, some at his home.

According to the testimony of Colonel North, Casey (1) was aware of the 1985 HAWK shipment roughly contemporaneously; (2) knew of the diversion before the fact and may even have suggested it; (3) was shown a diversion memorandum drafted by North for Presidential approval as early as February 1986; (4) spoke to North "several times a week"; (5) had "specific and detailed knowledge" of the Contra resupply operation; (6) suggested to North that he recruit Secord for the operation; and (7) told North that someone senior to him would have to "take the hit." Colonel North's testimony about Casey's knowledge is supported by the deposition testimony of Colonel Earl. It is also supported by the testimony of Mr. McFarlane, to the extent that it was McFarlane's impression that North and Casey met often and that North seemed to be taking direction from Casey.

The Attorney General spoke to Casey and met with him repeatedly during the key period of November 20–25, 1986. On November 20, they had a phone call and later a meeting with others lasting at least 1 1/2 hours. On November 21, they had a phone call after the Attorney General interviewed McFarlane. On November 22, the day the diversion memorandum was discovered, they had a morning phone call, an afternoon phone call, and a one hour meeting at Casey's home. The afternoon phone call from Casey to the Attorney General came just six minutes after North called Mr. Meese. On November 24, they had a meeting, with a number of other senior officials. On

November 25, they spoke by phone at 6:30 a.m., and met at Casey's home immediately thereafter.

In view of the foregoing, it is difficult to believe that Casey did not share with Mr. Meese any of his apparently extensive knowledge about the 1985 arms sales, the diversion, and Colonel North's activities at any time throughout 1986 (including the key November inquiry weekend) until the morning of November 25, when, according to Mr. Meese, Casey told him that Donald Regan had advised him of the diversion. This is particularly hard to understand since Casey knew Mr. Meese was conducting an inquiry about these matters for the President. (The Attorney General called Casey on November 21 to arrange interviews of CIA personnel as part of this inquiry.) One also wonders how Mr. Meese could be so certain Casey had no role in the diversion and how he could conduct a complete fact-finding for the President without even asking the Director of the CIA about these subjects.

The Attorney General's press conference on November 25, 1986, also raises troubling questions. The Attorney General stated that the President had not known of the Israeli pre-Finding arms shipments to Iran and that the proceeds of the arms sales had been sent directly from the Israelis to the Contras; both these statements were wrong and were contrary to the information Mr. Meese had received during his inquiry. A number of his other pronouncements at the press conference were of dubious accuracy, and it was at best premature—given the nature of his inquiry—for Mr. Meese to state categorically that neither the President nor any Cabinet official knew of the diversion. Mr. Meese also made the following statement during the conference:

> I think every member of the Administration owes it to the President to stand shoulder-to-shoulder with him and support the policies that he has—the policy decisions he has made as well as to stand by him when something has happened which the President didn't know . . .

The Attorney General is supposed to be an independent and impartial enforcer of the law. How can he, then, stand "shoulder-to-shoulder" with the President and tell other witnesses to do so, and still aggressively and objectively seek and find the truth?

We would also note that Mr. Meese was unable to answer many important questions posed by the Committees in his deposition. Although the Attorney General testified in deposition at some length, he responded that he did not know, could not remember, did not recall, had no recollection, or some similar formulation some 340 times.

Mr. Meese's failure to involve the Criminal Division in the November investigation is also troubling. Former officials of the Justice Department from both this and previous administrations have emphasized that it has been the Department's policy to bring in career investigators and prosecutors in sensitive situations as quickly as possible to insulate the Department from criticism.

Officials currently within the Justice Department also believed that the Criminal Division should have been involved more promptly in the November inquiry. As we have already noted, Criminal Division head William Weld stated in deposition testimony that he sought to involve the Division in the inquiry on November 21. Although Mr. Meese was not present at the November 21 meeting at which Mr. Weld argued that the Criminal Division should be brought into the fact-gathering regarding the arms sales, he clearly was aware of Mr. Weld's feelings. In fact, on November 24, after the diversion was confirmed, the Attorney General called Mr. Weld and told him that the Criminal Division had purposely been kept out of the investigation. Another Department official—Associate Attorney General Stephen Trott—stated in his deposition that, had he known all the facts, he believed it would have been appropriate to involve the Division as of the evening of November 20.

Because of the Attorney General's failure to act promptly to preserve documents, to conduct thorough interviews—and in some instances, any interviews—of the major actors in these events, we may never know the answers to many of the key questions that have been raised by this affair. Regrettably, in the minds of many, the issue will always remain as to why the questions were never asked.

NSC Involvement in Criminal Investigations

We concur in the facts as set forth in Chapter 5 on NSC involvement in criminal investigations, but there are several additional issues that should be noted.

First, as the chapter explains, the NSC at several points attempted to either interfere with an ongoing investigation or initiate an investigation against those perceived to be opposed to their activities. While the chapter properly ascribes blame to the NSC for such interference, it seems to absolve the law enforcement agencies of any responsibility for accommodating the NSC's requests. But the law enforcement agencies in these cases are not entirely without responsibility. During 1985-1986 there were numerous leads, both from the media and from criminal investigative reports, which indicated that North was involved in a private Contra resupply organization. These leads were never pursued until after the Hasenfus crash when members of the House Judiciary Committee requested that these allegations be investigated and that an independent counsel be appointed. Furthermore, officials from the FBI, Customs, and the Department of Justice went out of their way to provide North with information regarding criminal investigations. (See e.g., the Kelso and Miami Neutrality Act cases, etc.). North used this information to conceal and divert attention away from his unlawful operations.

Our nation has painfully learned from past experience that a democracy cannot exist when those responsible for enforcing the law can be manipulated for political purposes. Law enforcement officials must be ever vigilant against attempts to use their vast powers for such purposes. In these cases, some law enforcement officials exercised questionable judgment in allowing North and Poindexter to interfere with criminal investigations.

In addition, there are several other facts that we feel are important, which deal primarily with the Kelso, Miami and Terrell investigations.

1. The Kelso Investigation

The significance of the Kelso section in Chapter 5 of the Committee report is not entirely clear from the facts as stated in the chapter. In order to understand why Owen and North were so concerned about Kelso, one must understand just what Kelso was doing and learning in Costa Rica.

During the summer of 1986, Kelso and another Customs Service informant went to Costa Rica to investigate a counterfeiting and drug ring. Later in August, Kelso contacted the Customs Service and agreed to be debriefed by them and the Secret Service in Costa Rica.[1] The Secret Service agents left Costa Rica before the debriefing took place. However, two Customs agents went to Costa Rica and debriefed Kelso and his companion. They told Customs that the DEA agents in Costa Rica knew the location of drug laboratories and had been paid to conceal the location of narcotics.[2]

The Customs agents then went to the DEA agents in Costa Rica and told them what Kelso had said. That night Kelso and his companion were arrested at their hotel by the local police accompanied by a DEA agent. They were questioned by the police and the DEA. They had on their persons papers that included the radio call signals of the DEA agents.[3] After being questioned, Kelso was released and driven to the Hull ranch by Costa Rican security personnel.[4] Hull asked Kelso to explain his activities, which Kelso did. Hull called Costa Rican intelligence officers, who came to his ranch to arrest Kelso. Shots were fired and Kelso escaped.[5]

When Kelso returned to the United States, he wanted to surrender to U.S. authorities. During those negotiations, his attorney provided to the Assistant U.S. Attorney tape recordings Kelso made while undercover in order to demonstrate that Kelso was working for U.S. intelligence agencies. (Kelso had previously passed a polygraph examination on the question of whether he worked for the CIA.[6]) These tapes were provided only under the express condition they not be sent to Washington, D.C. where, Kelso feared, they could get into the "wrong hands".[7]

Meanwhile, Ambassador Tambs sent a complaint about Kelso to U.S. Customs, which reached William Rosenblatt, the Assistant Commissioner for Enforcement.[8] Rosenblatt insisted on getting the Kelso tape recordings from the local Customs agent, even though the Assistant U.S. Attorney had told the agent that the tapes could not be sent to Washington, D.C. Rosenblatt testified that he was not aware of that condition. However, the fact remains that he gave his only copy of tape recordings made by an undercover source to a total stranger—Rob Owen. Owen did not tell Rosenblatt he worked for North or the CIA. He told him he worked for a private organization.[9]

Not surprisingly, Owen never returned the tape recordings. Instead he made two trips to Costa Rica to meet with the DEA agents.[10] When asked about the incident during his deposition, Owen refused to answer questions, claiming a questionable "attorney work-product" privilege. Owen claimed that all of his activities during the Kelso incident were attempts to investigate allegations made against him in the Avirgon-Honey lawsuit. Even if this were true, there was no legal basis for refusing to answer the Committee's questions. Furthermore, if true, it would mean an even more egregious misuse of the criminal investigative process. That is, if North and Owen were using the Customs Service to provide them with criminal case information in order that they might defend themselves in a civil lawsuit, it was a flagrant abuse of North's position at the NSC.

2. The Miami Neutrality Act Investigation

Due to the lack of time, the Committees were not able to follow every lead, examine all of the documents, or interview other actors in the Miami Neutrality Act investigation (such as the defense attorney, the targets and subjects of the investigation and others). However, some additional information that the Committees learned should be noted.

The chapter in the report omits a description of how the investigation began. It actually began in January 1985 when the FBI in Alabama was investigating the activities of Tom Posey and the Civilian Military Assistance (CMA). Plans had been made by CMA to send a force of mercenaries to train Contra forces and attack the Southern front of Nicaragua. North wanted to keep on top of the situation.[11]

In January 1985 a film producer, Larry Spivey, called FBI Special Agent Michael Boone in Los Angeles from a motel in Miami.[12] Spivey had just met with Jack Terrell, Tom Posey, and others planning the incursion. Spivey had earlier met with North. North had also called Boone to warn him that Adolfo Calero believed that Terrell was dangerous and his invasion plot was untenable. Boone asked the FBI in Miami to interview Spivey and Posey.[13]

FBI Agent George Kiszynski interviewed Posey and Spivey at the FBI office in Miami. During the interview of Posey, Spivey called North from the FBI office. Spivey told Kiszynski that North was relieved that the FBI was now involved and in control of Posey, who had agreed to cooperate with the FBI.[14] Kiszynski's report of the interview was sent to North, with the approval of FBI headquarters. Therefore, the FBI knew as early as January 1985 of North's connection to their investigation of the CMA and Posey.

Two weeks later, Posey complained to Spivey that the FBI was not giving him any guidance regarding what to do. Spivey called the Alabama FBI agent assigned to Posey and also called FBI Executive Assistant Director Oliver "Buck" Revell. Spivey told them that they should not view Posey as a "target." He said that North had earlier told him that during a meeting with Attorney General Smith and Robert McFarlane, President Reagan told them that Posey and men like him should never be prosecuted and called Posey a "national treasure". This statement was included in the FBI report that was filed.[15]

(Spivey also stated to the Committee that, in early 1985, North admitted he could go to jail for violating the Boland Amendment, so he was going to "lay low" until Ed Meese was confirmed as Attorney General.[16] Time did not permit the Committees to investigate Spivey's claim.)

3. The Terrell-Robinette Investigation

The section in the Committee report regarding Robinette's investigation of Terrell and subsequent FBI cooperation amply illustrates North's attempts to involve the FBI in an investigation of those whom he perceived to oppose his activities. However, the section fails to mention that North and Poindexter sent a memorandum to the President complaining about Terrell.

On July 17, 1986, North sent a memorandum to Poindexter claiming Terrell was conducting an "active measures" campaign against the Contras.[17] North asserted Terrell was the source of Congressional and media reports against the Contras. He also said the FBI believed Terrell might be involved in a plot to assassinate President Reagan. Poindexter told North to write a memo to forward to the President, which he did on July 28, 1986.[18]

The memo to the President stated that Terrell was the source of anti-Contra allegations and was a cooperating witness in the Miami Neutrality Act investigation involving gun-running, narcotics smuggling and assassination plots. North failed to mention that it was actually the pro-Contra forces that were being investigated for these activities. North concluded the memo by saying: "Since it is important to protect the knowledge that Terrell is the subject of a criminal investigation, none of those with whom he has been in contact on the Hill has been advised."[19]

4. The Public Integrity Investigation

After the Hasenfus crash, a majority of the Majority Members of the House Committee on the Judiciary wrote to the Attorney General requesting a preliminary investigation to determine if an independent counsel should be appointed to investigate claims that North, Poindexter, Casey and others illegally assisted the Contras.[20] This investigation was assigned to the Public Integrity Section of the Department of Justice, a section composed of career prosecutors with substantial experience in investigating allegations against public officials.

These attorneys canvassed the Department of Justice, FBI and Customs to determine what investigations involving the Contras were pending. Neither the FBI nor Customs revealed their numerous contacts with North in various criminal investigations. It is a question the appropriate committees of Congress should pursue more fully.

More fundamentally, however, the Public Integrity investigation is important in evaluating the Attorney General's November 1986 weekend inquiry. The Attorney General admitted that he was aware of the Judiciary Committee independent counsel request and of the Public Integrity investigation. Yet, he interviewed and investigated the activities of North, Poindexter, and Casey without ever informing the career prosecutors who were already investigating these individuals. It is standard prosecutorial practice not to interview the target of an investigation until all the facts are known. It is also standard practice to check with other prosecutors to see what evidence they may have on the targets before interviewing them. Most importantly, it is not standard practice to question the targets of another prosecutor's investigation without first checking with that prosecutor, so as not to interfere with an ongoing investigation. The Attorney General disregarded these tenets when he did not include any of the career prosecutors, who were already investigating North and Poindexter, in his weekend inquiry.

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1. Rosenblatt Deposition (9/25/87), pp. 47-48.

2. Rosenblatt Deposition (9/25/87), pp. 71-72; Memorandum of DEA documents (10/28/87).

3. Memorandum of DEA documents (10/28/87).

4. Memorandum of DEA documents (10/28/87).

5. Memorandum of DEA documents (10/28/87); Owen Deposition (10/1/87), Exh. 1.

6. Interview of Bruce Black, AUSA, (10/28/87).

7. Interview of Bruce Black, AUSA, (10/28/87).

8. Rosenblatt Deposition (9/25/87), p. 44.

9. Rosenblatt Deposition (9/25/87), p. 58.

10. Owen Deposition (10/01/87), p. 21; Memorandum of Owen Deposition of 10/01/87.

11. Owen Deposition (10/01/87), pp. 11-14, FBI teletype of Jan. 1985 from Miami (2-6961) to Director file 2-211-3.

12. Letter and enclosure to Sen. Boren from FBI Director Webster (4/22/87) re: Neutrality Matters-Nicaragua.

13. *Id.*

14. Interview of Spivey (10/28/87).

15. FBI teletype (HO 2-211-4) interview of Larry Spivey (01/13/85); interview of Spivey (10/28/87).

16. Interview of Spivey (10/28/87).

17. Memorandum from North to Poindexter (07/17/86) N45918-19.

18. Memorandum from Poindexter to the President, N45896.

19. *Id.*, at N45897.

20. EM-13.

PETER W. RODINO, Jr.
JACK BROOKS.
DANTE B. FASCELL.
LOUIS STOKES.

Additional Views of Senator David L. Boren and Senator William S. Cohen

Introduction

As the work of the Iran-Contra Committees comes to a close, it is important to focus on the future and, in particular, on how to strengthen Congressional oversight of intelligence activities. This issue has been a matter of great concern to us since becoming the Chairman and Vice Chairman of the Senate Select Committee on Intelligence in January.

In order to go forward constructively from this point, we believe it is essential that all the information developed with respect to CIA's involvement in this affair should be included in the final Report. This is important both to the Intelligence Committees in Congress and to the Director of Central Intelligence in order to be clear as to what happened, to evaluate effectively what should be done as a result, and to determine ways to avoid similar problems in the future. Accordingly, we provide the following supplemental facts and observations regarding CIA assistance to the Nicaraguan resistance as well as the Agency's role in the Iran initiative.

Moreover, it should be noted that the Iran-Contra Committees also developed information concerning the CIA which did not pertain directly to the Iran-Contra affair, but which raises concerns for the Intelligence Committee. It is our intention to pursue these matters consistent with our oversight responsibility.

Assistance to the Nicaraguan Resistance

According to information received by the Committees, certain CIA personnel in two Central American countries provided support for the Contras and their private benefactors in a manner contrary to both Agency policy and restrictions imposed by law. Furthermore, in some cases CIA officials failed to provide adequate direction and supervision, to make certain that these kinds of activities would not take place. In other instances, certain CIA officials withheld information from inquiries undertaken after the Iran-Contra affair had become public including those undertaken by the Agency itself to determine if any CIA personnel had been used improperly.

The Report refers briefly to certain types of informal assistance by CIA personnel in one Central American country in the delivery of lethal aid to the Contras during 1986, when such CIA assistance was not authorized by law or by official Agency policy. According to information available to the Committees from the CIA, this assistance included numerous occasions in which lethal aid was transported on CIA helicopters to Contra elements in the field. These deliveries were approved at least at the level of the CIA base chief, who was in charge of providing lawfully authorized forms of communications, intelligence, and humanitarian assistance to the Contras. Other CIA personnel at the base were also involved, but did not alert higher authorities until after the Iran-Contra affair became public. The CIA Deputy Director for Operations (DDO) and the Chief of the CIA Central American Task Force (C/CATF) testified that they did not authorize these helicopter deliveries and did not learn of them until 1987.

There is also conflicting evidence as to whether certain CIA officials acted promptly enough when first told of the problem. Further study by both the oversight committees and the Agency itself of the effectiveness of the CIA command and control system is clearly in order.

Extensive activities by a CIA chief in Central America, Tomas Castillo, during 1985-86 to support lethal air deliveries by private Contra benefactors—including his role in the acquisition of an airstrip and his direct secure communications with the private benefactors and Lt. Col. North—are covered in the Report. What is not fully discussed, however, is the responsibility of certain Agency officials for supervision and control of his activities. At the very least, there seems to have been a serious failure of communication between the station chief and his superiors regarding certain activities he undertook that were contrary to official Agency policy. Regardless of whether CIA officials gave confusing guidance or the station chief disregarded instructions, the outcome was a breakdown in the process of supervision and accountability.

Of equal concern is the testimony by the station chief and the Deputy Director for Operations with regard to the station chief's failure to respond fully to subsequent Executive branch inquiries. The station chief stated that he limited his responses because of guidance he believed he had received from the DDO.

The DDO denied giving such guidance. In either case, the result was the withholding of information by a senior CIA officer from crucial internal inquiries conducted within the Executive branch.

Furthermore, certain CIA officials admitted that they evaded questions asked by Members of the Senate Intelligence Committee when they testified under oath during the Committee's preliminary inquiry into the Iran-Contra affair in December, 1986. While the White House was urging all officials to testify fully and completely before the Committee's preliminary inquiry so that the entire matter could be resolved promptly, these CIA officials who appeared as witnesses withheld information about Lt. Col. North's role in providing support for the Contras. Whatever may have been the circumstances before November 25, 1986, there could be no excuse for denying such information to the Committee after North's role in the diversion became public.

The DCI has made it clear that he will seek to strengthen command, control, and accountability within the CIA—and the oversight committees should also be active and vigorous in that effort. Senior CIA officials must develop and implement mechanisms that keep field operations under control and that provide a clear chain of responsibility for sensitive decisions. That was not always the case in the administration of CIA relations with the Contras in Central America during 1985-86. Cooperation and trust are essential to insuring a positive long-term relationship between the Executive and Legislative branches in this area of vital national importance. By strengthening our own internal Senate Intelligence Committee procedures for the safeguarding of sensitive information, we are making a concerted effort to contribute to rebuilding trust. The Agency, for its part, must never fail to provide full and truthful information to the Committee sufficient for it to conduct effective oversight.

The Iran Initiative

Somewhat different concerns are raised by the CIA's role in the sale of arms to Iran, treated at length in the Committee's Report.

The CIA's initial involvement in support of the November 1985 arms shipment, as the Report points out, had not been authorized by a Presidential Finding, itself a violation of the Hughes-Ryan Amendment. The Deputy Director correctly called for a stop to this activity and had a draft finding prepared and sent to the White House. Nonetheless, the CIA continued to provide assistance to the project in the absence of a signed finding, confirmation of which came several weeks later in a telephone call to the Deputy Director. In fact, no CIA official ever asked to see, or was shown the December 5, 1985 finding, which purported to provide retroactive authority for its earlier activities. There clearly is a need to strengthen the internal procedures by which the CIA assures itself of the authenticity of a Presidential order before proceeding to provide support to covert operations.

Relatedly, in their investigation of this part of the story, the Committees found serious flaws in the Agency's recordkeeping system. Messages which were crucial to establishing accountability for this misconduct could not be located or reconstructed.

The CIA's later involvement in the U.S. arms sales to Iran was, of course, authorized in the Presidential Finding of January 17, 1986, but neither the Finding nor covering memorandum clearly defined CIA's role, nor did they mention the role contemplated for the NSC staff. In fact, the CIA's involvement in this covert initiative was hardly typical. While a few officials in the CIA bureaucracy were aware of the operation, it was not treated as part of the Agency's covert action infrastructure, subject to its own internal reviews and constraints. Indeed, as the Report makes clear, the CIA did not control the operation. Rather, it was the NSC staff that made the operational decisions. The CIA's participation was in large part confined to acquiring weapons from DOD, and transferring them to the Secord organization. In most of the meetings with the Iranians, the CIA representative was a retired annuitant who was there primarily because he spoke Farsi and could be used as an interpreter. The CIA did not set the agenda for the meetings, nor did it have the final say as to what the U.S. terms and conditions for the arms sales would be. On the contrary, the views of CIA professionals, who objected to using Ghorbanifar, objected to providing intelligence to Iran, and worried about the security of the operation, were largely ignored in the process.

Perhaps being relegated to a secondary role in the execution of the Iran initiative caused CIA career officials to maintain a "hands-off, leave-it-to-them" attitude. Indeed, it is clear from the record that Director Casey supported the Iran arms sales and apparently agreed with the NSC staff's control of them. The January 17, 1986 finding included direction that Congress not be advised of the initiative, and there was no subsequent reconsideration in the context of the statutory requirement for notice "in a timely fashion." Questions were not raised either about the NSC staff's control of the operation or about working through individuals who were viewed with concern by CIA career officials. This was reflective of a larger pattern expressing, but not pressing, concerns about actions taken or decisions made throughout this affair. For instance, when Director of Operations Clair George told Director Casey he refused to handle Ghorbanifar, the Director assigned a non-DDO officer—an analyst—to the task. According to his own testimony, George raised no objection.

There is no question that the relationship between intelligence professionals at CIA and their political superiors is one of inherent tension. It is difficult to raise concerns about initiatives to which the DCI is committed. Indeed, the Iran initiative seems to suggest that career officials were reluctant, unduly suppressed, or ineffective in bringing their concerns to the attention of management. In any case, the oversight committees, as well as the new Director of Central Intelligence, will have to ask whether institutional restructuring is desirable to assure that CIA professionals will not be placed in circumstances in the future in which they find it difficult to raise concerns, either internally or with the oversight committees.

Finally, in the area of analysis, the Committees' Report mentions several cases in which intelligence was misrepresented or otherwise misused to support policy positions. Questions also remain concerning the May 1985 memorandum by the National Intelligence Officer for the Near East and South Asia, which outlined policy options including the sale of arms to Iran, along lines similar to those previously presented to U.S. policymakers by financier Adnan Khashoggi and former CIA official Theodore Shackley, both of whom were influenced by Ghorbanifar. Several contentions of that memorandum were used to support the draft National Security Decision Directive, which raised the possibility of arms sales to Iran, later rejected by the Secretaries of State and Defense. Less than a year later, a second intelligence community estimate effectively reversed the conclusions of the 1985 memorandum.

While this later intelligence estimate corrected the shortcomings in the first, it is nevertheless of concern that the earlier analysis may have ignored available evidence to support a particular policy goal. This is not clear from the Committees' record. What is clear, however, is that intelligence analysis must not be driven by policy. It is a fundamental responsibility of the oversight committees to ensure that the institutional processes by which analytical judgments are made are independent and objective.

DAVID L. BOREN.
BILL COHEN.

Additional and Separate Views of Senator Howell T. Heflin

This Report should be viewed clearly for what it is—a consensus report. I do not agree with all of the language in the Report, nor do I agree with all of its conclusions and recommendations.

At the beginning of the hearings, I stated that we were beginning a process of investigation, of affirmation, and of restoration. The investigation and affirmation have been completed, we should now finish the process of restoration.

The Congressional investigation into the Iran-Contra Affair is concluded with the publication of this Report. The investigation has been long, controversial, though, at times uplifting. While the two Congressional Committees have finished their tasks, the Independent Counsel is still investigating this matter. It is the responsibility of the Independent Counsel and, ultimately, the courts, to determine whether any criminal laws were violated. This was not the Committees' task.

I believe that the very essence of a democracy is an informed electorate. Clearly, the hearings have fulfilled this role. They have served to educate the American people about the strategic importance of the Middle East and the dangers we are facing in Central America. Additionally, the investigation and the hearings have confirmed my support for a democratic outcome in Nicaragua and have strengthened my resolve to see an end to the Soviet and Cuban presence and the Marxist expansion in Central America.

While I agree with most of the recommendations in the Majority Report, I would urge the Congress and the President to consider two additional recommendations:

1. The creation of a small joint House and Senate Intelligence Committee, which would include as permanent members the assistant leaders of the House of Representatives and the Senate. Such a Committee would not only further enhance secrecy, but also could promote a better relationship between the Executive and Legislative branches and between the two Chambers of the Legislative branch; and

2. The Chairman of the Joint Chiefs of Staff should be made a statutory member of the National Security Council. The hearings revealed the fact that the Chairman of the Joint Chiefs of Staff, our nation's top military officer, was not notified of the Iran arms sales. Even more alarming are contentions that there was neither an adequate evaluation of the impact of the arms sales on our own military arsenal and preparedness nor an adequate determination of the effect of the arms on the Iran/Iraq War. I believe that the presence of the Chairman of the Joint Chiefs of Staff would better ensure adequate evaluation of the effect of National Security Council actions on our nation's security.

I agree with the following language contained in Senator Trible's Statement of Additional Views:

> The essence of the Iran-Contra Affair lay in the decision by a few within the National Security Council Staff to embark on a self-destructive journey into the privatization of foreign policy. The pitfalls associated with this departure from long established principles of government are well chronicled in the report. The main lessons are: that a President's staff, no matter how well intentioned, must always be accountable; that a President who is deceived and from whom information is intentionally withheld is a President betrayed; and that truth, trust and respect for the rule of law and the Constitution are indispensable to the success of our free society.

I also agree with the following statement in Senator Trible's Additional Views:

> The argument that this President failed to honor his Constitutional duty to "take care that the laws be faithfully executed" and failed to create an environment where the rule of law governs goes too far.

In regard to affirmation, I believe that the hearings have reaffirmed once again two fundamental truths upon which our republic is founded:

1. That a nation of laws does not permit officials of the government to act above the law; and

2. That a nation of laws does not permit official acts outside the law.

While I do not believe that the Committees have the power or ability to address questions of guilt or innocence regarding any particular individual, I believe that it is entirely right and necessary for the

Committees to make it clear that no one is above the law, and that the ends do not always justify the means.

It is my sincere hope that these hearings have demonstrated the urgent need for a bipartisan foreign policy for Central America. While the Founding Fathers wisely established a system of government which had natural frictions and conflicts between the branches built into it; nevertheless, the Executive and Legislative Branches must learn to work together. We must do so on matters generally, and we must do so especially regarding Central America. The United States of America cannot afford another enemy like Cuba in the western hemisphere, particularly in Central America.

Many questioned the wisdom of holding these hearings. I believe that once again the doomsayers were proven wrong. The hearings demonstrated that America's system of government draws its strength from openness and truth. As long as those two cornerstones of our government are preserved, our democracy shall persevere and triumph.

While our search for the truth was not flawless, and this Report is not without its imperfections, we can feel some sense of accomplishment in that we now know much more about the Iran-Contra Affair than before we began. In addition, important national policies have been aired, debated, and critiqued. If, indeed, we made these contributions, then our efforts have not been in vain.

HOWELL HEFLIN.

Additional Views of Senator David L. Boren

A project of this kind involves hundreds of people and literally thousands of hours of work. This report represents a good faith attempt to accommodate the views of the many individuals involved and to reflect a consensus as to the facts and conclusions of the elected officials responsible for this process. Not surprisingly, with eleven Members of the United States Senate and fifteen Members of the House of Representatives the final product cannot completely satisfy everyone involved on each particular point. Nevertheless, I support this Report and accept generally its concepts.

While accepting generally this Report, I cannot say that I accept every statement contained in the Report, nor can I say that I would represent each fact or conclusion in precisely the same way. For example, three points should be noted as illustrations. Others could be cited as well.

First, there is a section of the report relating to alleged improper propaganda activities engaged in by the Department of State. In my opinion, this matter was not sufficiently focused upon in testimony taken by the full Committees to merit reaching final conclusions. As a member of the Senate Committee, I do not feel comfortable with conclusions being stated in the Report primarily on the basis of inquiries made by only a portion of the staff rather than upon testimony heard by the elected members.

Second, while I do not dispute that certain criminal laws may have been violated, I do not believe that these Committees are the appropriate forums in which to determine, even by implication, whether and which criminal laws have been broken and by whom. An independent counsel has been appointed to address these matters and they are presently pending in the courts. I believe that these issues properly should be pursued through the judicial process without comment by the Congress.

Third, I am concerned that the Report may imply that secrecy in all circumstances is wrong. While no one believes more strongly than I that government should be open and accountable to the people, there remain certain sensitive activities of the government which must be kept secret to protect our national security. The taxpayers have invested significant amounts of money to develop intelligence sources and methods which are necessary for our protection as a nation. The amount of information and activities which are classified should be held to the absolute minimum necessary for national security. It should be emphasized that such necessarily secret undertakings can and must be subject to appropriate and vigorous oversight by and accountability to elected officials. However, it would be unwise to conclude that in all cases secrecy is wrong. To the extent that this Report might be taken by some to imply otherwise, I would respectfully disagree.

Finally, I would like to share some thoughts which I hope will be of benefit to public officials and Members of Congress should there ever be a need to conduct a similar inquiry in the future.

These comments are certainly not meant to be critical of the leaders of the current Committees. They have worked diligently and effectively under very difficult circumstances. Some of the most thoughtful lessons learned from the entire proceedings have been drawn and communicated to the American people by Senate Chairman Inouye, House Chairman Hamilton, Senate Vice Chairman Rudman, and House Ranking Minority Member Cheney. They have my respect and appreciation.

Let us hope that we have learned enough from the mistakes of the past that future committees of this kind will not be required. If history does repeat itself, however, I believe that some modifications should be made in the process.

First, the Committees once merged were too large and unwieldy to maintain an appropriate pace and focus for their work. While there are definite drawbacks to joint committees, if circumstances necessitate the creation of such a committee to avoid duplication of effort and friction between the two houses, then that committee should be much smaller.

Second, the Committees should have conducted their inquiry with greater focus upon the broader policy questions and constructive lessons to be learned and with less time focused upon the kind of examination more appropriate to criminal prosecutions in a courtroom. Congressional committees by their nature are structured to conduct policy inquiries as opposed to criminal prosecutions. By having legal counsel conduct so much of the questioning of witnesses, an adversarial courtroom atmosphere was sometimes established which was not appropriate. Members of the Committees were carefully chosen by the leaders of the two houses to reflect a balance in terms of policy, ideology, and party. The benefit of that balance is lost when one or two staff attorneys conduct as much or more of the questioning than the elected members of the Committees. Attention becomes focused upon a contest between attorneys or between the Committees and the witnesses instead of upon the valuable lessons that can be drawn from the testimony to help our country in the future. For example, once the questioning of Col. North finally turned to the elected members of the Committees, the tone of the proceedings changed markedly from that which had been established in the first few hours of his direct examination.

Third, I believe that the activities of the Committees did not focus sufficiently upon the need to end the underlying mistrust between the two branches of government. It is imperative that we rebuild the concept of bipartisan partnership in foreign policy and key national security areas. Writing more rules and regulations will not be sufficient to prevent a recurrence of damaging tragedies of this kind unless we also act to restore mutual respect and trust between the members of the two branches of government and both political parties.

We must now concentrate on confidence building measures which will help bring us together. America must once again speak to the rest of the world with a single voice when our vital national interests are at stake. Each branch of government is to blame for the continuing polarization and escalation of mistrust. The Congress must understand the need for decisiveness and continuity in foreign policy that can only come from allowing the President as Commander in Chief sufficient freedom to act. Five hundred and thirty-five Members of Congress cannot act as President or as Secretary of State. At the same time, the President must realize that while he may initiate policies, he cannot and should not be able to sustain them under our system without the support of the Congress. Unlike a parliamentary system in which the Cabinet is itself a part of the same unified institution as the legislature, our system of separation of powers demands a high level of cooperation and mutual trust which has been dangerously eroded in the last two decades. America will not continue to exert influence as a great nation in world affairs if we do not rebuild that cooperation.

As I continue to exercise my own personal responsibilities as Chairman of the Senate Select Committee on Intelligence, the testimony which I have heard as a member of these Committees has challenged me to do all that I can to repair that eroded trust. I personally will work as hard as possible to make certain that the Senate Intelligence Committee safeguards all information entrusted to it and demonstrates its commitment to a process which will lead to greater candor between the oversight committees and the intelligence agencies. At the same time, I will work to make the oversight process more systematic, to strengthen it and to make it more effective. While the clarification of some laws and rules may well be needed, effective and alert Congressional oversight is the key to appropriate accountability in the conduct of classified activities.

In retrospect, the country would have gained more from the hearings if the Committees had focused more of their time on broader policy questions rather than spending so much time on factual details which should and ultimately will be determined by the courts. Such a process would have also included time for careful consideration of the reflections and suggestions of leading scholars, statesmen, and public officials, both past and present.

As I stressed at the beginning, these comments are not meant to stand as criticisms or second guessing. It is always easier to see in retrospect what should have been done. This Senator certainly does not claim the foresight to have avoided all mistakes. These remarks are offered solely as reflections of one Senator upon the experience which all of us have collectively shared.

In citing areas where I think the process could have been improved, I certainly do not mean to detract from the many valuable insights gained by these Committees and reflected in this Report. In the bicentennial year of our Constitution, the Report importantly reaffirms our commitment to the rule of law. The hearings have clearly dramatized the grave danger posed to our republic and to the democratic process when private citizens or public officials, even those who may have good intentions, seek to subvert the legal process and substitute their own judgments for the rule of law. If from these hearings and from this Report, we all gain a better understanding of our Constitution and a deeper commitment to its principles, then the time, and effort devoted in this undertaking will have been fully justified. I truly believe that, especially with the passage of time, the work of these Committees will be judged to have made a contribution to that worthy goal.

DAVID L. BOREN.

Supplemental Views of Senator James A. McClure

In his opening statement before the Committee, Col. North testified, "It is sort of like a baseball game in which you [Congress] are both the player and the umpire. It's a game in which you call the balls, and the strikes, and where you determine who is out, or who is safe. And, in the end you determine the score and declare yourself the winner."

Today, it appears that what Col. North predicted is exactly what happened. For many reasons, I have decided that I cannot agree with the Majority, which has indeed declared itself the winner. Therefore, I have joined seven of my colleagues in filing dissenting views which I believe are more objective than the committees' report. However, there are some additional points which I would like to make briefly.

Most important, what do we know today that we didn't know a year ago, when the Iranian arms sale and the funds diversion were first made public by the Administration? What do we have to show for the months of effort and millions of dollars of taxpayers' money that we have spent? We have identified more of the individuals involved and spent countless hours going over their respective role. We have plotted the intricate financial arrangements and reviewed thousands of written documents, recorded conversations and witnesses' testimony.

Certainly, we know many more of the details, but we have really only shown that President Reagan was forthcoming and honest when he told the American public that he was unaware of certain of his staff's activities. As Secretary of State Shultz told the Committees, the essential facts unearthed by Attorney General Meese and his investigators remain the essential facts today.

Then why all the concern? What is the justification for a select committee? These questions lead me to my second point.

Throughout the investigations, and in the Committees' report, we are told that the Iran-Contra operations and the subsequent investigations are the result of a breakdown in trust between the executive and the legislative branches. There is some truth in this, but it is not the truth the majority has in mind. The truth is that the only reason the committees were created is that the Congress did not trust the Administration when the Administration itself made public the story of the Iran initiative and the diversion of funds to the Contras. Not content to believe the Republican Administration, Congressional Democrats used their total control over the legislative branch to try to prove that the Administration had willfully worked to break the law, undermine the Constitution, and subvert the democratic system. A year after the President and Attorney General Meese went before the American people with their revelations, we know that none of that was true. Yet at the conclusion of the investigation, the majority of the committee is still unwilling to admit that Ronald Reagan told the truth and that its hopes of destroying the Reagan Administration have vanished.

Another issue that came up during the hearings that should be addressed is the oft repeated saying, "It's a sin to tell a lie."

I hope, and I believe, that I have as much respect for the truth and as much contempt for a liar as any member of the Committees. I must confess, however, that I was sickened by this oft repeated canard. Of course, truth is preferable to falsehood and lying is not the usual pursuit of honorable persons. It may be important to repeat that truism, but it is equally dishonest to comdemn others without any attempt to relate the facts to the circumstances. Would you lie to save the life of your wife or child? If a gunman entered your home and demanded to know if there was anyone else in the house would you honestly say, "Yes, my wife is upstairs in bed and my little girl is asleep in her room"? If a robber in the street demands all your money, are you honor-bound to reveal the cash in another pocket? Just who is being hypocritical in piously saying of Colonel North, "But he lied?"

The last issue deals with the charge made by the majority that the activities investigated by the Committee were un-American assaults upon constitutional government. That the majority is entitled to their opinion is undeniable—that they are mistaken in that opinion is arguable. This country of ours was born out of conflict in which there was difference of opinion. Nathan Hale died a patriot and a hero in our eyes. In the eyes of the British he was a traitor and executed for treason. If our revolution had failed, that "majority" opinion would have been reversed. So it makes a difference what you stand for as well as how you stand up for it.

I believe that Americans judging these events will see what Colonel North, Admiral Poindexter and others stand for, and judge them on that basis, not on differences of opinion over how well or poorly they did it. Many of us recognize the evils of an atheistic regime that denies most values we hold important to us, and the threat that international communism embodies. Surely, we must also reognize that this evil and amoral ideology threatens our security in the Persian Gulf and in Central America. To those who disagree, I defend your right to have a divergent opinion, pray that you never find out how wrong you are, and trust that you will never be in the majority.

JIM MCCLURE.

Additional Views of Congressman William S. Broomfield

In my view, the Congressional Iran/Contra investigation went on too long and yielded few results. Since Attorney General Meese publicly announced the Iran/Contra connection nearly a year ago, there have been hearings by several Congressional committees, a full-scale investigation by the Senate Intelligence Committee, and partial investigations by other committees. The President's Special Review Board (Tower Commission) was formed last December and reported in February. The Select Committees were formed in January and conducted public hearings and other proceedings through September.

Prior to formation of the Select Committees, I emphasized that the Committees' true role was to garner the facts, get those facts out to the American people, and recommend corrective action if necessary. I also stated my reservations about the length of time for which the Committee were formed, the absence of a specific budget figure, and the absence of adequate security procedures. My fear was that the Committees would embark on an open-ended and unfocused investigation that would wander beyond its legitimate objectives yet fail to perform its proper mission. This fear has been realized.

What do we have to show for all the activity in Congress? The consensus appears to be that—aside from unearthing considerable detail—the Committees made little progress in resolving even the factual issues. The basic outlines of the story have not changed much since the Attorney General's announcement, no less the Tower Commission's extensive report.

The Select Committees created the television image of a trial, with a focus on factual detail—primarily inconsistencies in the accounts of participants which would tend to disparage them or implicate senior officials, especially the President. Members of Congress should have tried to be as objective as possible on the factual issues. It was inappropriate for the Committees to pursue its investigation in such an adversarial manner. The lengthy, confrontational and prosecutorial questioning techniques by counsel were more appropriate for the courtroom than a Congressional hearing.

As a result of this approach, the Committees' hearings left many factual issues contested. Even more disappointing, however, was that the Committees developed little if any record to support improvements in national security decisionmaking. The institutional issues were not systematically explored. This was a major failure of the Committees and should be acknowledged as such. Instead, the Majority is content to convey a vague impression that something is wrong without having undertaken the effort to clarify it.

Rather than dwelling on some sensational factual revelations, the hearings could have been a more useful vehicle for public education and participation by stressing legal, organizational and political issues. It was in these conditions, after all, that the Iran/Contra affair was born.

Policy Errors

As the President admitted soon after public revelation of the Iran/Contra matter, mistakes were definitely made by the Administration. These included major errors in policy and serious mistakes in implementation.

The President ultimately authorized the arms transactions with Iran that were aimed at release of the U.S. hostages in Lebanon and ostensibly at establishing contacts with so-called moderate elements in the Iranian government. While the President must bear some of the blame for the policy errors, he himself never acted beyond his Constitutional power or statutory limitations on national security activities.

However, the President was the recipient of flawed advice and was not well served by several key aides. Two National Security Advisors as well as the Director of Central Intelligence were primary proponents of the erroneous policy that led to arms-for-hostages dealings with the Iranians. At the same time, key policy advisors such as the Secretaries of State and Defense made insufficient efforts to dissuade the President from pursuing this ill-advised policy.

The present investigation has not revealed that the President was fully aware of the numerous indications that the policy pursued by the NSC staff was in error. The President realized the risks but had realistically decided to proceed in the face of those risks. As the Tower Commission concluded over eight months ago, the President's main fault was his overwhelming propensity to focus on the plight of the U.S. hostages. Beyond this, the President simply trusted his staff at the NSC and did not pursue the details of implementation sufficiently.

Mistakes in Implementation

The most serious institutional problems which arose in the Iran/Contra affair were those which occurred in the course of implementing the policy on Iran. It is these practical mistakes that—even more than the flawed policy of dealing in arms with Iran—have caused such a furor with the public and in Congress.

Officials charged with executing the Iran program dealt with middlemen of questionable trustworthiness. They dealt with Iranian representatives who were hardly moderate and who may in fact have had direct links to terrorism. They recruited certain individuals of dubious reputation to provide private support for the operation, and created a structure that encouraged an emphasis on private profit as well as public service.

The ultimate mistake in implementation was, of course, the decision to divert proceeds from the Iran arms sales to support the Nicaraguan freedom fighters. There is absolutely no evidence that the President was aware of this action and all witnesses agree that the President was not informed. There is also no concrete reason to suspect that the President was knowledgeable of the diversion plan.

The genesis of this mistake is still unclear. The Israeli official Amiram Nir may have been its original proponent, as may Manucher Ghorbanifar. North himself certainly proved a receptive audience, and Poindexter plainly did not think this matter through in terms of its professional, political and legal significance.

In this as well as related policy questions, the President's staff did not brief him sufficiently, seek his advice and the advice of other trusted senior advisors, nor obtain his permission. In the final analysis, they did not protect the President from the consequences of a runaway operation.

The Committees knew from May 2, 1987 that there were no grounds to believe that the President had anything to do with the diversion of funds to the Nicaraguan resistance but decided to keep the public in the dark until Admiral Poindexter testified nearly three months later. It is especially unfortunate that the Committees did not adhere in this respect to their main objective of getting the full story to the American people.

Potential Improprieties and Illegalities

I cannot accept the Majority's speculations concerning the extent of secret NSC staff operations as part of an "off-the-shelf, self-sustaining" covert capability. But I also feel that we should not understate the range of potential improprieties and illegalities committed by Director Casey, Admiral Poindexter, Lt. Col. North and their private associates, as well as certain other government officials. As I stated earlier, the President did not exceed his Constitutional and statutory prerogatives but unfortunately the actions of certain subordinates are not clear on this point.

Potential improprieties and illegalities were present in the Iran program from its inception. It still remains unclear whether the President was requested or in fact consented to Israeli transfers of U.S. arms to Iran in summer 1985. CIA support for the November 1985 shipment of HAWK missiles to Iran was provided without a prior Presidential Finding, despite the fact that the President's Executive Order on Intelligence Activities No. 12333 specifically includes such operational support activities within the scope of covert action legally subject to the Finding requirement.

During implementation of the Iran program under the January 1986 Finding as well, numerous questionable operational decisions were made. Despite the fact that the form of transaction with Iran was essentially a sale, prices paid by the CIA to the Defense Department for U.S. weapons were established under the Economy Act, which governs interagency transfers of inventory. As a result, third parties were permitted to retain large profits resulting directly from the sale of U.S. arms. While the issue of ownership of these profits will ultimately be settled in court, I believe that the fact that such profits were being made available to individuals who were not in a strictly arms-length transaction with the U.S. government at least should have created a real concern for all those involved or aware of the nature of the operation.

Some of the most disturbing actions occurred in connection with North's activities in support of the Contras. It is indisputable that both McFarlane and Poindexter countenanced the misrepresentation to Congress of North's role. In McFarlane's case, this was accompanied by his understanding that the Boland amendment then in force applied to the NSC staff.

But perhaps the clearest examples of questionable activity occurred in connection with the NSC staff's reaction to the unfolding disclosures of the Iran transactions. Actions were apparently taken to muddy the waters with respect to whether the President had authorized the summer 1985 Israeli transactions as a U.S.-supported covert action under the National Security Act or whether they occurred without any form of Presidential authorization and in violation of the Arms Export Control Act. Similar efforts were made with respect to the November 1985 shipments, particularly through Poindexter's destruction of the December 1985 Presidential Finding. Finally, there was the well-known shredding of voluminous official records.

Consultation with Congress

I cannot agree with the Majority that the President was necessarily obliged under the Constitution and current law to notify Congress prior to completion of the operation. At the same time I find it difficult to understand how the Administration could have continued to pursue such a risky and politically sensitive operation for so long without some form of consultation with Congress. Certainly some way could have been found to inform Congressional leaders without compromising security.

As Ranking Republican Member of the Foreign Affairs Committee, the indispensability of some form of consultation has become very clear to me. While the President may withhold notification of important operations overseas, he does so at his own peril. This peril is exemplified by the reaction that we have experienced to the revelations in the Iran/Contra affair.

There were at least three key areas of activity by the NSC staff, occasionally with CIA or other U.S. government support, that the President should have consulted upon in some appropriate way with Congress. These are the Administration's basic policy regarding Iran, the overall implementaiton of the Iran initiative, and the nature of Executive branch support for the Nicaraguan resistance.

The President should not have been advised to "go it alone" in these sensitive areas. While the President is entitled to undertake certain unilateral actions under his Constitutional prerogatives—and there is absolutely no reason to believe that the President ever intended anything other than actions that were within his Constitutional powers—he should, except in highly exceptional circumstances, consult with Congressional leaders on sensitive policy matters.

Constitutional and Institutional Ramifications

I cannot share the Majority's view that the Iran/Contra affair illustrated a profound Constitutional crisis. What it does show, however, is that the institutions of government in the area of national security need careful attention. As I noted above, this issue of institutional process never received systematic consideration during the hearings.

In the course of implementing the Iran and Nicaragua programs, the NSC staff turned to a concept of covert action that had been substantially revised in the aftermath of the intelligence investigations of the 1970's. This is the notion that "plausible deniability" in national security matters should apply primarly to Presidential decisionmaking. In connection with the Contra program and certain other programs such as the public campaign against Qaddafi, the NSC staff tried to do two things which ultimately cannot square with our democratic institutions and values: first, to conduct secret activities more or less openly and occasionally even in the glare of publicity; and second, to preserve deniability in covert operations only for the President and not the U.S. government as a whole.

The concept of plausible deniability pursued in connection with policies on Iran and Nicaragua connects to undesirable past tendencies in U.S. national security operations. This does not amount to a Constitutional crisis, but neither is it merely an affair of personalities. It was the system in the NSC as well as the people who caused the problem.

Congressional Responsibility

Congress cannot escape responsibility for the institutional conflicts that led to excessive secrecy by the elements in the Administration that were pursuing the Iranian initiative. To a considerable degree, Congress also failed to perform its Constitutional duties with respect to important national security matters. Congress insisted on oversight of intelligence in the mid-1970's but by 1985 the oversight process became politically charged with respect to Nicaragua policy. Beginning with the dispute over the mining of Nicaraguan harbors which unfolded during 1984 there were increasing leaks and public discussion of intelligence information that had been reported to the oversight committees.

With respect to Nicaragua, Congress sent a conflicting set of signals on how far it would support measures intended to counter Sandinista subversion in Central America. Successive Boland amendments and related legislative actions made the statutory framework for action against the Sandinistas vague, shifting and inconsistent. Congressional vacillation on foreign policy matters, especially relating to Central America, should demonstrate to every American that Congress itself must share much of the blame in the Iran/Contra affair.

Legislative Recommendations

Despite the obvious need for a more systematic structure for Presidential approval of covert action and sufficient Congressional notification of related findings and activities, the legislative recommendations contained in the Majority report do not amount to a unified approach. The ultimate issue of the extent of the President's prerogatives to order covert action without informing Congress cannot of course be completely resolved through legislation. But it remains for Congress to clarify the exercise of its own powers in this area through clear and precise legislation, which is currently lacking.

Congress should consider enacting comprehensive requirements that Presidential Findings authorizing covert action be made in writing prior to the outset of operations, and that such Findings would apply to covert activities by any agency or instrumentality of the U.S. government—not just the CIA. Consideration should also be given to permitting the President, in extraordinary circumstances, to notify only the four leaders of Congress—the Speaker and Minority Leader of the House of Representatives and the Majority and Minority Leaders of the Senate—of sensitive intelligence activities, rather than the Congressional leaders as well as the chairmen and vice chairmen of the intelligence oversight committees, as at present. This approach would not impede the exercise of the President's prerogatives to withhold all notification in an emergency situation. I have introduced legislation on these subjects, H.R. 3611, which is discussed in the Minority views.

A major omission in the Majority report is the absence of a recommendation in favor of creating a joint intelligence oversight committee. Such a recommendation was contained in the reports of the Tower Commission and, before that, of the Vice President's Task Force on Combatting Terrorism. To reestablish trust and confidence between Congress and the Administration on the issue of secret intelligence operations, it is essential to limit the access to information on Capitol Hill and to distinguish the intelligence oversight functions from normal legislative operations. For this reason, I fully endorse the joint intelligence committee proposed by the Minority.

Further, in making its recommendations, the Committees did not cast a sufficiently critical eye at Congress itself. Any recommendations by the Committees in this area could not easily have been ignored. The Committees could, for example, have recommended specific improvements in the security of classified information, including its handling, staff clearances, and strengthened sanctions against security violations. The absence of comprehensive recommendations in this regard is a serious deficiency in the Committees' report.

Finally, I wish to note my apprehension about the Majority's recommendation that further inquiries should be undertaken by Congressional committees with related jurisdiction. Additional revelations will undoubtedly occur in the coming months as a result of proceedings initiated by the Independent Counsel and other bodies. There is a real danger that—during an election year—some in Congress my seek to exploit such disclosures for partisan political purposes.

It is time we got past the Iran/Contra affair and onto the important issues on the national security agenda. Having failed to propound a vision for future relations between the Executive and Legislative branches in the national security area through this investigation, Congress must now try to play a more constructive role on the issue facing the nation in the Persian Gulf, Central America and elsewhere.

William S. Broomfield.

Supplemental Views of Senator Orrin G. Hatch

Much has been said in the foregoing reports about the Constitutional roles of Congress and the President in foreign affairs. I concur with the views of my fellow Republicans in our minority report on that subject, and offer the following supplementary remarks.

The framers of the Constitution anticipated a Congress with significant powers and with a checking function on the President. But the framers also created a chief executive with real power. It is, I believe, a common misperception that the framers, in creating the Presidency at the Constitutional Convention, were driven only by a desire to avoid the tyrannical power of the English kings. Such was not the case in the American colonies by the year 1787. It is true that the abuses of power of the English monarchs had been the principal impetus for the colonists to flee England, and to later fight the Revolution; and the dictatorial excesses of King George III were well understood and sought to be avoided by the framers. But when the Constitutional Convention convened in Philadelphia, the delegates were more concerned about the ineffectiveness of the Continental Congress, and about the lack of any coherent foreign policy for their fragile new nation, than they were about the abusive power of kings. John Jay's Federalist Paper No. 64 is an especially informative summary of the manner in which the framers viewed the power of the President in foreign affairs.

As finally written, the Constitution provided for a Congress, a chief executive, and a judiciary, each with considerable authority. In the field of foreign affairs the President was specifically empowered to negotiate treaties, receive ambassadors, and command the military. His authority was checked, but not eviscerated, by the other branches of government. The President was expected to take the lead role in foreign affairs. Just as in other areas of the Constitution, such as the Senate's duty to advise and consent on Presidential appointments, Congress's role in foreign affairs was primarily one of advice, consent and deciding whether to appropriate money. It was the President's duty to propose treaties and recommend other aspects of American foreign policy. He was given the requisite power to act, so that the country could follow his lawful lead. To be sure, the system required a great deal of cooperation and communication between the two branches, but it also contemplated the President's being given the opportunity to develop a consistent and coherent policy.

One of the chief lessons, and reminders, of the Iran/Contra experience is that our modern presidents need the power envisioned by the framers. This is true both as a matter of constitutionality and practicality. We simply must have a system where the President is given reasonable latitude to develop our country's foreign policy. He cannot be second-guessed and curtailed by Congress at every turn, as I believe President Reagan has been in his honest efforts to implement foreign policy objectives in the Middle East, Central America, and elsewhere around the world.

Presidential elections should emphasize the candidates' views on foreign affairs. Once elected, the successful candidate should be given the opportunity to propose and implement his program, consistent with the concomitant powers of the other branches of government. Such is the basis of democracy, of our constitutional form of government, and of common sense.

Consider, for example, the so-called Boland amendments and their effect on President Reagan's attempts to formulate a coherent foreign policy in Central America. In contrast to President Reagan's consistent policy of support for the Nicaraguan freedom fighters, Congress enacted an inconsistent series of amendments. From 1982 to 1987, Congress changed its collective mind virtually every other year—offering support one year and withdrawing it the next—with no consistency even among the Boland amendments themselves. By holding the Reagan Doctrine hostage to the Boland amendments, I believe Congress used its power over the purse in an irresponsible manner; and in doing so acted against the national interest.

Based on my tenure in the United States Senate, it seems to me that the simple good sense of giving the President the chance to do his job has escaped the legislative branch in recent times. The rush by Congress to micromanage the country's international affairs from South Africa to Cambodia to arms control negotiations has hindered any effective development of a consistent approach to our international problems. Congress is not designed, by staffing or function, to either take the lead in proposing foreign policy, or to prevent the President from doing so.

Congress has a legitimate constitutional role to play in foreign affairs. Congress has the power of the federal purse and can refuse to fund any program the President proposes. Indeed, it should refuse to finance any operation it finds to be unlawful or clearly against the national security interests of the United States; but the spirit of our Constitution requires that Congress also allow the President some freedom to develop a lawful strategy in international affairs—even if some members of Congress may have misgivings about it. Otherwise, we have no chance at a coherent foreign policy. Undue interference forces the President and his advisors to be more secretive than they should be, which creates even more problems both at home and abroad.

I believe the unnecessary interference by Congress into foreign affairs contributed significantly to the poor judgments, concealment from Congress, improper privatization, and other shortsighted decisions of the Iran/Contra affair. The activities of the executive branch that the majority report condemns with such vigor could in the main have been avoided by a return to the system envisioned by the Framers where the President is given the power to act openly and confidently in the international arena. If he fails, he will have to account to the people. If he succeeds, he may be reelected. But for the system to work, he needs to be given the latitude to try.

There are no doubt those who will see my remarks as an overly simplistic solution to the problem. I agree the solution is simple, but it is also practical and constitutionally required. It is the complexity of the current quagmire that causes many of the problems. I fully believe that if Congress would give the President more freedom to do his job, we would see less inclination toward covert operations and the so-called secret wars that every modern Administration has been accused of conducting. The lack of a coordinated foreign policy effort between the two branches forces the executive branch into its own available resources, rather than seeking overt support from Congress, to carry out its policy objectives.

We simply cannot maintain consistency and respectability abroad with 535 Secretaries of State, who also happen to serve in the United States Congress. The United States President—of any party—must be given the tools to effectively carry out his policies in foreign affairs. In my opinion, we would do well to learn from the Iran/Contra investigation that communication will achieve more than confrontation, and that partisan politics should not be played in the all-important area of foreign affairs.

With respect to the recommendation of my Republican colleagues to establish a joint Senate-House Intelligence Committee, I have some concerns. My mind is not yet made up on the issue. I need to study the proposal in more detail before endorsing the concept at this point.

ORRIN G. HATCH.

Supplemental Views of Congressman Henry Hyde

One unanticipated benefit of the Iran Contra hearings was the surprising emergence of so many strict constructionists among members of the Joint Investigating Committee. It is heartening to see the ranks of those devoted to law and order increasing, notwithstanding the selectivity of their devotion.

In earlier days, we were conditioned to favor appeals to "the higher law" over mere statutory expressions, depending on who made the appeal and the degree of left-ward tilt to their cause.

We have seen high minded demonstrators trespass on military installations, splash animal blood on draft records, illegally picket within 500 feet of the South African Embassy, conduct sit-ins to obstruct C.I.A. university recruitment, and deliberately violate our immigration laws to provide sanctuary to a chosen few.

These acts of civil and criminal disobedience are routinely applauded by many who turn a cold shoulder, a blind eye and a deaf ear towards such appeals when made by, for example, Fawn Hall on behalf of her former boss, Lt. Col. Oliver North.

Ms. Hall's testimony that "sometimes you have to go above the written law . . ." has been much remarked in the press, but we are less often reminded that she was echoing Thomas Jefferson, who on September 20, 1810 wrote to John Colvin:

> A strict observance of the written law is doubtless *one* of the high duties of a good citizen, but it is not *the highest.* The laws of necessity, of self preservation, of saving our country when in danger, are of higher obligation. To lose our country, by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty and property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.*

The selective availability of "the higher law" is but one of the anomalies underscored by these hearings, and has particular relevance to any study of the scope and applicability of the various Boland Amendments.

A dominant theme of these hearings has been vigorous condemnation of those who allegedly violated the letter or the spirit of the Boland Amendments, or who lied to Congress or were not forthcoming in their testimony about Central American policy. The rationale for these transgressions—the need for secrecy to protect lives, the sensitivity of negotiations with Iran about hostages, combined with the notorious inability of Congress to keep a secret—were summarily rejected by most of the committee's members. We were regularly reminded of some bedrock propositions, including the President's duty under the Constitution to see that the laws are faithfully executed, that we are a government of laws and not of men (most especially in this bicentennial year) and that the end cannot justify the means.

These propositions—true enough—deserve a less facile application to the complex events involved in these hearings. All of us at some time confront conflicts between rights and duties, between choices that are evil and less evil, and one hardly exhausts moral imagination by labeling every untruth and every deception an outrage.

In assessing how helpful the axiom is that "the end doesn't justify the means," I suggest consideration of the dilemma facing President Harry S. Truman on August 6, 1945.

Four months earlier, the invasion of Okinawa cost 151,000 American and Japanese lives. The resistance was suicidal, and the Joint Chiefs of Staff believed if this World War was to end, Japan itself would have to be invaded. The best military estimates anticipated a loss of one million American lives and no one could guess how many more million Japanese lives. The President had no options that could be called good, but the stark choices before him required a decision: to drop the atomic bomb on Hiroshima (and, indeed, Nagasaki) and thus end the war or to invade the Japanese homeland at a cost of untold millions of lives.

We all know Truman's decision, and for myself I believe it was the right one. But to those who think it was morally wrong and seek to indict Mr. Truman, I suggest, rather, they blame those in the Japanese government who forced this decision on him.

What has this to do with the Iran Contra affair? The circumstances and the actors are different but the moral dilemma is the same—or, as Lt. Col. North put it, "Lies or Lives."

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*Writings of Thomas Jefferson, n. 28 at p. 279.

Former Virginia Governor Charles Robb correctly summarized Congress' vacillating Nicaraguan Contra policy when he called it "playing with people's lives." New York Times correspondent James Le Moyne echoed that sentiment when he wrote recently that ". . . it is difficult not to conclude that it has been hypocritical, immoral and deeply damaging to the United States to send men to kill and to die for six years on half promises and sporadic assistance." Le Moyne concluded his October 4, 1987 article in the New York Times magazine with these observations by Donald Castillo, an ex-Sandinista who Le Moyne believes is "one of the Contras' most able political analysts: 'You North Americans have great values, but you need to learn to define and apply them . . . you have been generous to us—and you have also utilized and manipulated us as part of your domestic political agenda . . . But have you been aware that you're playing with the life and blood of a people and a country?' "

To those many who grew impatient with we few who insisted on discussing policy, I suggest that a fundamental reason for our differing perspectives on the purpose of these hearings may be the differing view we take towards the seriousness of the threat that Marxism-Leninism poses to peace, freedom, security and prosperity in the world. Those of us who not only take this threat seriously but also try to do something about it are often considered to exercise a "cold war mentality." This is a grave sin indeed in the liberal catechism. But our view of the urgency of the situation was well stated by Professor George McKenna of the City College of New York who wrote in the New York Times of June 5, 1987:

> "While Congress fiddles, the world burns. In the 1960's there were four openly proclaimed Marxist-Leninist regimes in the third world; today there are 16. Two Soviet client states are right at our doorstep, and they are working relentlessly to add another four to the Soviet fold: El Salvador, Guatemala, Honduras and Costa Rica. The Reagan Administration's 'crime' is that it tried to stop this process, just as the Roosevelt Administration tried to stop the expansion of another evil empire in the summer of 1940."

There are other contentious issues these hearings have emphasized—none more important than the proper constitutional roles of the President and the Congress in the formulation and execution of foreign policy. Senator George J. Mitchell of Maine and I have exchanged a series of letters on this subject, which I characterize as the struggle between the Congressional supremacists and the Presidential monarchists. Actually neither characterization is accurate, as each has a vital role which cannot exclude the other. But defining these boundaries is (to use Simon Bolivar's phrase) like plowing in the sea. Nonetheless a better understanding of the President's constitutional authority and that of Congress is essential if we are to ever develop and manage a successful foreign policy, regain the confidence of our allies and deserve the respect of our adversaries. The renewed focus on this "invitation to struggle" is one of the positive things to emerge from these hearings.

I will not burden these views with the arguments and citations I have made in my correspondence with Senator Mitchell, except to assert my general conclusion that the Founding Fathers intended to vest the general control of foreign affairs in the President—subject of course to the specific checks set forth in the Constitution. Citing *United States* v. *Curtiss-Wright Export Corp.* 299 U.S. 304, 319 (1936), the Tower Commission's report correctly asserted: "Whereas the ultimate power to formulate domestic policy resides in the Congress, the primary responsibility for the formulation and implementation of national security policy falls on the President." (PV-1)

There have been many elements of unreality about these hearings. But the most serious breach of reality has had to do with why we held them in the first place. What was it, really, that brought us to create these select committees? Some will argue that it was a concern for Constitutional process; and well we should have been concerned. But to leave the matter there obscures what seems to me a crucial substantive issue, a real and deep division that has led to this exercise.

That division, to be simple, accurate and blunt, can be stated thus: there are Members of the House and Senate who do not believe that communism in Central America is a grave threat to peace and freedom that requires an active and vigorous response from the United States; there are Members who concede the threat in the abstract, but wish to do little about it beyond talking; and there are Members who acknowledge the threat and wish to challenge it, forthrightly, through the variety of instruments proposed by the National Bipartisan Commission on Central America.

In real political life, the first two categories of Members—those who see little or no threat, and those who see the threat but cannot gather themselves to challenge it—work together. Their alliance, as curious as it may seem in the abstract, is what accounts for the baroque dance of the Boland Amendments. This strange alliance between the unbelieving and the believing-but-unwilling has made a mockery of our foreign policy: we have had one policy one year, and another policy the next.

This has reinforced the tendency of insecure Latin American leaders to say one thing in private and another in public. This strange alliance of political convenience and/or confusion has further strengthened anti-anticommunism here at home. One shudders to think of what it has taught the Soviets.

Whether one traces this triple division to that all-purpose whipping boy, "Vietnam," or whether one finds longer historical lines feeding it, it remains a desperately debilitating fact of our national life. When Members of the Congress of the United States look at the same situation and see radically different things—or, seeing the same thing, differ utterly on what, if anything, is to be done about it—we are in far deeper trouble than the issue of Constitutional propriety.

My side of the argument—those who both see the communist threat in Central America and wish to address it through economic, humanitarian, and security assistance to that region's democrats—carries its share of the blame for the impasse we have reached. We have somehow failed to convince those who see the threat we see that there are ways to address that threat which serve the ends of peace, freedom, and justice. Our failure to make this argument successfully—a failure, I say in all candor, that has plagued the White House as well—has created circumstances in which those who neither see nor wish to act have co-opted some of their more prescient colleagues. The result has been the kind of schizophrenic Congressional policy that we have been enduring these past months.

Meanwhile, whatever its own failures of persuasion, the Executive has had to act. At the other end of Pennsylvania Avenue, there is precious little of the luxury of ambiguity. One must act (always, one hopes and prays, wisely), for not to act, in this world, is itself an action. Sins of omission, according to classic moral theory, can be as grave as sins of commission. The Executive has not sinned, largely, on the omission side of the ledger (save in its unwillingness to make its case to the country in and out of season). Conversely, we have seen ample evidence of the ways in which the Executive has acted that can be legitimately criticized. But there is a luxury we indulge here. For the sake of Constitutional propriety, we must, on occasion, indulge it—this luxury of restrospective wisdom. But it should be a rare indulgence. It can lead to policy confusion and indeed paralysis. Indulge the luxury of retrospective wisdom too promiscuously, and we inevitably fall into sins of omission—which can be as bad, indeed, worse, than the sins of commission. Neville Chamberlain was a good and decent man, and an ambiguist. The Czechoslovaks paid the price for his sins of omission in 1938. His countrymen paid for the next six years, as did most of the free world.

Moreover, we have had a disconcerting and distasteful whiff of moralism and institutional self-righteousness in these hearings. Too little have these committees acknowledged that the Executive may well have had a clearer vision of what was at stake in Central America. Too little have we acknowledged that our own convolutions have made the task of the Executive even more difficult. Too little have we confessed that there is real reason to be concerned about the Sieve on Jenkins Hill—the unending leaks which everyone on these committees know exist, and few are willing to take steps to address effectively. That the Executive is a major source of leaked information is a sad truth, but in no way diminishes our own responsibility. No one doubts that the Executive has done some very stupid things in this affair. But one would have liked to have seen some modest acknowledgment of Congressional reponsibility for our present policy impasse.

In nearly thirteen years of service in the House, it has seemed to me that the Congress is usually more eager to assert authority than to accept responsibility; more ready to criticize rather than to constructively propose; more comfortable in the public relations limelight than in the murkier greyness of the real world, where choices must often be made, not between relative goods, but between bad and worse. These are not the characteristics that give one confidence in the Congress as a policy-making instrument for America's inescapable encounter with an often-hostile world.

These unsavory character defects are not endemic to this institution. One cannot walk into the old Senate chamber, and travel back, in the mind's eye, to the days when that chamber was filled with the likes of Webster, Calhoun, Clay, Davis, Benton, Houston, Cass, Seward, Chase, and Douglas, and think that the United States Congress cannot do better than it has done in matters of foreign policy over the past ten years. The question is not institutional; it is, in the deepest sense, personal. It has to do with the quality of mind and spirit we bring to our deliberations. It has to do with whether we are playing to the galleries, or to conscience and duty.

We ought to acknowledge that questions of Constitutional propriety have been engaged by these hearings. But we must also acknowledge that there is a deep division in our national legislature over a basic question in world politics. We have, in these hearings, obscured rather than illuminated that division. I bring it to the surface here, not to bait anyone, but in the conviction that only an honest delineation of our differences can lead us beyond posturing to genuine debate. Without that kind of debate, we will continue to flounder in the world, at precisely the historical moment when the tide seems to be shifting in favor of the forces of democracy.

History will not look kindly on us if we miss the opportunities to advance the twin causes of peace and freedom that are before us: in Central America, and throughout the world.

So, as we debate ends and means, let's not obfuscate the deepest ideological and moral issue of our time, which is the contest between freedom and tyranny in the world. To dismiss that contest as the fantasy of an over-heated Cold War mentality is not the act of a morally or politically serious person. Those who see the scalps of General Secord, Robert McFarlane, Admiral Poindexter, and Lt. Col. North as the sure and quick path back to post-Vietnam neo-isolationism are going to reap the whirlwind before this century is out. By all means, let's get our house in order and use means to conduct the great contest in the world that don't corrupt our own democratic processes. But let's not make the argument over means a Trojan Horse by which neo-isolationism and *anti*-anticommunism resume dominant positions in our policy debates.

The resurgence of isolationism in our contemporary culture is easily traced.

In the 1970s, several key ideas, developed during Vietnam, came forward in American public life and got lodged in the teaching centers of our culture—the religious leadership, the universities, the prestige press, the popular entertainment industry.

A new form of isolationism arose. It did not teach, as traditional isolationists did, that America should avoid the world because we would be corrupted by it. No, the neo-isolationism of the post-Vietnam era taught that America should stay out of the contest for power in the world because *we* corrupted the world. What happened when America acted in world affairs? "Vietnam," was the sole answer. No reference to the war against Hitler; no reference to the Marshall Plan and the reconstruction of Japan; no reference to NATO or the Alliance for Progress. No, what happened when America "intervened" in the world was "Vietnam."

And so, paradoxically, the very same people who taught us that the world was "interdependent," also teach us that "intervention" is a very bad thing. This neo-isolationism, as many political commentators have noted over the past decade, has become deeply engrained in the Democratic Party.

We were also taught, in the post-Vietnam period, that anti-communism was culturally passe, historically fallacious, and an inappropriate criterion for guiding U.S. policy. Anti-communism, too, had gotten us "Vietnam." Those who taught this theme were not, in the main, pro-Leninist (as the Old Left was in the 1930's). Rather, they were *anti*-anticommunists. As such, they were willing to give an extraordinary benefit of the doubt to a whole host of Third World communists, each of whom was, in turn, going to get right what Lenin and Stalin had fouled up: Fidel Castro, Ho Chi Minh, Salvador Allende, Maurice Bishop, Mengistu Haile Mariam, the Angolan Eduardo Dos Santos and, finally, Daniel Ortega and the Nicaraguan Sandinistas.

The miserable record of these tyrants speaks for itself, and there is no need to belabor it here. But what we ought to note is how this *anti*-anticommunism was challenged by the people of the Third World. Wherever, in the past decade, people have been given the choice among traditional authoritarianism, a Leninist "new order" and democracy, they have, without exception, chosen democracy. They chose democracy in El Salvador, Honduras and Guatamala. They have chosen democracy in Portugal and Spain. They chose democracy in Argentina and Brazil. They chose democracy in the Philippines. They are trying to build democracy, under great pressure, in the northern provinces of Mexico today. I have no doubt that the great mass of the people of Chile, given the choice, would opt for democracy.

And some people, many of whose leaders had been in the forefront of the revolution against Anastasio Somoza, still wish to choose democracy for Nicaragua. That is what, tragically, our *anti*-anticommunists cannot see.

A third idea let loose by the Vietnam debacle was the notion that military force can never serve the ends of peace, security and freedom. Now those who live in a society of laws should, to be sure, be very careful about the circumstances in which they take up the sword. But in a world persistently hostile to deomcratic values—a world in which men will starve their opponents to death for political power (as in Ethiopia), or torture them in ways that would defy the imagination of Dante (as in Cuba), or stupefy their minds with drugs (as in the USSR)—it seems odd, at the very least, to assert that the world's principal democratic power should unilaterally reject the use of armed force on all occasions short of the invasion of Long Island.

This teaching was challenged, in a fundamental way, by the successful U.S. action in Grenada—a military intervention for which the people of Grenada expressed overwhelming gratitude. This teaching was being challenged by our support for the Afghan resistance. And this teaching was being challenged by the policy we adopted in the 99th Congress of direct military support for the Nicaraguan democratic resistance. Considerably more was, and is, at stake, then, than the fate of Daniel Ortega and Adolfo Calero. What was at stake in the Nicaragua debate—and what remains at stake today—is this key teaching in the creed of those who had become accustomed to the high moral ground in the U.S. foreign policy debate since Vietnam—that American military force cannot serve the ends of peace in the world.

Of course, there remain specific questions of legality that have to be clarified. The Courts will wrestle with these questions for years to come, as the Independent Counsel proceeds with his indictments and prosecutions. But, there also are questions of the way in which our foreign policy-making apparatus works—or doesn't work.

Beneath these questions of legality and structure, however, there is an even more fundamental argument being engaged here. ***It is the question of Ameri-***

ca's role in the world, and indeed whether we shall have any.

As we argue over "intervention" and "interdependence," neo-isolationism is being challenged—sometimes skillfully, sometimes clumsily—by the Reagan Administration. That is an important part of what we are arguing about in this affair. The Administration has forthrightly told the leadership of the communist world that the United States proposes to emerge from the paralysis and self doubt of the Carter era of "malaise" and to re-enter, vigorously, the war of ideas: the on-going battle for the hearts and minds of men and women all over the world. We have tried to be, again, the party of liberty in the world. This has been disconcerting, to say the least, to those who have been taught for almost a generation that America was not on the side of history. However, adequately or inadequately, the Administration has challenged this genteel form of surrender, and has reasserted the idea that history is of *our* making, if we have the wisdom, will and strength for the task. And that is part of what we're arguing about in this affair.

There is an argument over the appropriate use of military force being engaged here. The Administration has made plain—in Grenada, in Libya, in Angola, in Cambodia, in Lebanon, with the Afghan resistance and the Nicaraguan democratic resistance—that it believes that in certain situations armed force can serve the ends of freedom, justice, security and ultimately, peace. Its exercise of that power has been both skillful and, to be candid, less than skillful. But beneath the specific cases to be argued there is the more fundamental point of whether we as a nation are going to eschew the discriminate and proportionate use of armed force for anything other than direct self-defense.

We ought to admit, frankly, that we are, as a nation, deeply divided at these basic choice points. It is one of the great failures of the Reagan Administration that it has not forced these questions out into the open of our public life so that they could be debated civilly and frankly, rather than surreptitiously. Perhaps the providential paradox of our present situation is that these absolutely fundamental questions have been brought to the surface anyway, chiefly through the testimony of Lt. Col. Oliver North.

And so, beneath the legal and structural arguments; beneath the policy debate; even beneath the challenge to the post-Vietnam orthodoxy that I have so briefly sketched here—there is an absolutely basic question being engaged in the debate over this affair. And that is the question of America. This is not an argument over anyone's patriotism. But survey research has clearly demonstrated that many of America's most influential opinion-shapers and values-teachers respond negatively to the question, "On balance and considering the alternatives, do you consider American power a force for good in the world?" Note the modesty of the question. And yet many of our most prestigious commentators and analysts, many of our most influential scholars, bishops, and rabbis, answer in the negative.

Their teaching has had a profound, and I think debilitating, effect on our public life and our foreign policy for almost a generation. That teaching has gotten itself lodged, to a degree difficult to imagine, in the Congress of the United States and among members of both parties. It is a teaching of despair: perhaps humane despair, perhaps a despair tinged with a sense of the ironic and the contingent in human affairs, but despair nonetheless.

Others of us reject that counsel of despair. We do not claim to have all the answers when the complexities of policy are engaged. We know full well that mistakes have been made by this Administration, and some acting in the name of this Administration.

But we also know that these were mistakes made because of a judgment that, on balance and considering the alternatives, American power can be a force for good in the world, and that in the hierarchy of values freedom towers above all others.

HENRY J. HYDE.

Additional Views of Senator William S. Cohen

The Iran-Contra Affair was a significant departure from the constitutional processes which normally control the operations of the Government. While the affair was an aberration in this sense, it also demonstrated a recurring problem which has afflicted Administrations of both parties—albeit without such bizarre, unseemly, and far-reaching results.

When an Administration adopts objectives whose goals, however defensible, are at odds with actions taken by the Congress, or with its own publicly acknowledged positions, it embarks on a perilous course. Subordinates of any President are motivated primarily by a desire to carry out his wishes, whatever the obstacles. Without an appreciation of the balance between the branches, such subordinates may be ignoring the law, even if it means taking actions which violate publicly stated U.S. policy.

Normally, there are enough checks and balances within the governmental framework that such anomalies are detected and corrected early on. In the national security area, however, where secrecy is necessarily a tool of the trade, there is a greater potential that secrecy will neutralize the normal checks and balances of government. This was clearly demonstrated in the Iran-Contra Affair.

Part of the responsibility to ensure this does not happen rests with the President. He must provide a framework within the executive branch, particularly within its national security community, which ensures the participation of lawyers, policy and budget overseers, foreign policy and defense experts, as well as those with a particular perspective on Congress, in the formulation and implementation of policy. Secrecy can never be permitted to preclude or in any way constrain the advice needed by the President to make decisions crucial to the United States.

Similarly, secrecy can never justify eliminating Congress as a "check and balance" upon the power of the Executive. The Constitution makes no distinction in terms of those matters which affect the national security and those which do not. Congress itself recognizes that some matters cannot be disclosed to the public without also disclosing them to our adversaries, thereby effectively negating whatever benefit or advantage to the U.S. which might otherwise accrue. So, Congress has established a framework for dealing with such matters outside public view, while at the same time bringing the public's perceptions to bear upon the problem at hand. When Congress is not informed or is misinformed, when it is advised of actions long after they have occurred, the system of checks and balances is arrested. Democratic government, in effect, deteriorates toward dictatorship.

Ultimately, of course, the secrecy surrounding the Iran-Contra Affair was stripped away, first by the press and then by the investigations which followed. Exposure was inevitable, particularly in a world where information is so readily accessible and instantly communicated. Technology has miniaturized the globe. An event in a remote village can reach our eyes and ears in a matter of seconds. The existence of a free and vigorous press ensures that attempts to abuse or misuse governmental power and processes will ultimately be uncovered. Once exposed, the processes of government will intervene to bring about needed corrections. Thus, there is a certain inevitability created by our constitutional system, which guarantees both a free and probing press, and a resilient governmental framework capable of restoring the balance of constitutional power once it has been skewed. Indeed, this is the genius of our system and the essence of our democracy.

With respect to the Report itself, any effort of this magnitude, covering a subject of this breadth and complexity, necessarily represents a compromise. It is particularly true in this case, with a Report which purports to represent a majority of both the Senate and House Select Committees. Notwithstanding the give-and-take which attended the preparation of this Report, I believe it is, for the most part, faithful to the record before the Committees, and also, for the most part, is fair in terms of its assessment of the events described.

I do not agree, however, with all that is included in it. Indeed, it is doubtful that any member supporting this Report would contend that there are not a number of inaccuracies, omissions, or unsubstantiated contentions in these pages. There are also numerous places where the narrative unfairly characterizes, and draws unduly sinister conclusions from, the facts before us. It was not necessary to pulverize the facts in order to make the points at issue here. Overstating an argument frequently serves only to undermine its legitimacy.

In addition to these general reservations, I feel obliged to comment specifically upon three portions of the Report where my objections go beyond what I perceive as isolated cases of factual inaccuracies or unfair characterizations. The first involves the discussion of criminal violations in the chapter entitled "Rule of Law." Although the Committees make an effort to explain why they feel compelled to comment upon violations of criminal statutes, I believe it is inappropriate for the Committees even to appear to pass judgment in terms of whether those involved in the Iran-Contra Affair were guilty of criminal violations. I would have preferred the Committees limit their discussion to violations of the Constitution and civil statutes, and simply list those criminal statutes which may have been violated by the events which occurred. By stating that the Committees believe such statutes were, in fact, violated, the Report intrudes upon matters more appropriately left to the courts and the Independent Counsel.

I also question the inclusion of portions of the chapter concerning the National Security Council staff's involvement in law enforcement investigations. Those portions dealing with the actions of the Assistant United States Attorney in the Miami Neutrality Act investigation; a former Central American official; and the Customs inquiry concerning its undercover source (Kelso), do not, in my view, demonstrate any improper actions either on the part of the NSC staff or the other executive branch officials who are identified. Perhaps they are included here to reflect the extensive investigative effort expended by the Committees. Those efforts did not, however, produce proof of malfeasance. Nonetheless, they are described at length in a manner which implies by innuendo what was not established by the evidence. Only one of these three incidents was mentioned tangentially at the Committee's hearings (i.e., the Miami Neutrality Act investigation). None deserves memorializing to the extent they are treated here.

Finally, I question the inordinate attention devoted in the Executive Summary to the Office of Public Diplomacy and its activities in support of the Administration's policies. This matter received only passing mention at the Committees' hearings, and equally scant mention in the text of the Report. The prominence given to it in the Executive Summary is far more generous than just.

BILL COHEN.

Supplemental Views of the Honorable Bill McCollum

In good conscience I could not sign the majority report of this Committee because there are just too many things with which I disagree. While I have signed the dissenting views prepared by House Minority Staff, there are areas where my interpretation of evidence and testimony presented to us differs and I have some additional views which I feel compelled to set forth here.

The Iran/Contra hearings gave Americans a unique look inside a Presidential Administration. They also gave a sobering look at the results of the unwillingness of a President to have a Constitutional showdown with Congress over his powers, a lack of trust among people in our government, and a lack of a clearly defined and effective policy for combatting terrorism and rescuing hostages.

Partisan bickering was the most distressing thing about the hearings. It got in the way of our purpose, which was to bring out the facts, to determine the President's credibility, and, finally, to recommend law and policy changes that reach far beyond these hearings.

The cloud hanging over the President on the issue of his credibility was removed. The President told the truth when he said he did not know of the diversion and that his knowledge of various aspects of the affair was limited. Of course, the buck stops with the President, and he must accept responsibility for the errors and omissions of his appointees.

Clearly, mistakes were made by the Administration. However, critics during these hearings went to excesses. Some were highly partisan, others just overzealous. At times, members and counsel were unfair to witnesses.

Despite eloquent statements of objectivity, from the very beginning some members of both parties seemed gleefully intent upon "getting the President" and condemning the Administration for things they prejudged to have been wrong. At times, this prosecutorial fervor reached a fever pitch, which the media, wittingly or unwittingly, participated in. This was particularly evident as the Committee approached the testimony of Lt. Col. North, Admiral Poindexter, and Attorney General Meese.

In the end, the essential facts did come out. The Committee heard hours of testimony, took about 200 depositions, and saw countless exhibits. Even with this, we will never know all the details. The Director of the Central Intelligence Agency, Bill Casey, fell ill and died before we could get his testimony. There are a number of significant unresolved conflicts in the testimony of witnesses. My impression is that, for the most part, the witnesses were very credible and truthful with us. Most of the discrepancies in testimony probably rest with the simple and understandable differences in recollection of events that occur with the passage of time.

To analyze the results of the hearings, it is best to separate the Contra resupply policies from the Iranian arms initiative. The only connecting links were the diversion and the fact that Lt. Col. North and General Secord were involved in both.

When Congress stopped funding the Contras, the President was determined to keep them alive through private support until he could get Congress to reenact aid. The Boland Amendment not only cut off money, but purported to restrict any agencies engaged in intelligence activities from any type of support of the Contras. The President quite correctly turned to the National Security Council (NSC) to coordinate private fundraising and resupply. There was nothing illegal about this, but because Congress was kept in the dark, the whole policy became an easy target for criticism and charges of illegalities that echoed throughout these hearings.

The President made a major error of judgment in failing to confront Congress over the Boland Amendment and forcing a Constitutional showdown over the foreign policy powers of the President. It is unclear whether Boland applied to the NSC. But if it did apply to the NSC or to the President, Mr. Reagan should have said the amendment was void because it unconstitutionally restricted the powers of the Presidency, and he should have proceeded to openly and publicly fundraise for the Contras with the American people and with foreign countries, pending the resumption of the Congressionally approved aid for the Contras. Instead, the view prevailed that an open confrontation with Congress on this posed too great a threat to renewed Contra aid, and a secret policy of NSC-directed fundraising and resupply of the Contras was undertaken. If the President had been willing to confront Congress over this issue, probably there would have been no diversion and there may have been no hearings.

It is also obvious that the fundraising and resupply operations were carried out in inefficient and often inappropriate ways because of the secrecy, and Congress was misled, which exacerbated the growing lack of trust between the Administration and Congress.

The lesson is clear: secret operations are sometimes necessary, but secret policy in a democratic government never works.

One footnote to the resupply operation concerns the Role of the CIA. While I generally agree with the discussion of this in the minority report I am concerned that the superiors of a Central American station chief, Tomas Castillo, did not receive some criticism I think they deserve.

In my view Director of the Directorate of Operations, Clair George, the Latin American Division Chief and the Chief of the Central American Task Force, failed to give Castillo clear and concise policy guidelines for dealing with the resupply operation in the context of Boland restrictions, and they either negligently failed to catch, or intentionally overlooked, breaches by Castillo of guidelines they later said they thought they had given him.

It appears to me that when questions about the CIA role began to surface these superiors hung Castillo out to dry, and even in their testimony tried to cast him as much more of a loose cannon than I believe he was. They blamed him for all the breaches of policy they perceived to have occurred and accepted none of the responsibility when the time came for an accounting. Such behavior severely damages if not destroys the respect that must flow from operational men in the field to those in top positions at the CIA.

There were no violations of law by Castillo or the CIA in connection with his role during the resupply operation and no real harm resulted from any breaches of CIA policy, but the manner in which his superiors conducted themselves in this whole matter is disturbing.

Putting the pieces together, here is how the Iranian initiative came about. Recognizing the strategic importance of Iran, some analysts in our government suggested efforts to reestablish a relationship with the government of Iran or friendly elements inside Iran, if any could be found. The NSC made contact with the Israelis, who already had some type of relationship with elements in Iran. From whatever source, Iranian or Israeli, came the added inducement that not only could we explore new openings to Iran in this matter, but also might be able to get our hostages in Lebanon released.

With our blessing, the Israelis made arms shipments in September and November 1985. The Israelis asked our help with the November shipment. We provided the CIA proprietary aircraft and North and Secord got involved in routing the planes through some European countries. It turns out the Hawk missiles were not what the Iranians thought the Israelis had agreed to provide and the mission turned into a fiasco.

Despite the failure of the November effort, CIA Director Casey and newly appointed National Security Advisor John Poindexter became strong advocates for pursuing the contacts with Iran. Over the objections of Secretary Shultz and Secretary Weinberger, they won the President. Being sorely aware of leaks from the House and Senate Intelligence Committees, they did not trust any part of Congress to maintain a secret and decided to keep all of this from Congress. Because of their hostility to the idea and because of leaks of sensitive matters from their agencies, particularly from the State Department, they decided to keep Shultz and Weinberger in the dark on the initiative.

Initially, the CIA was to run the operation. However, Casey's top lieutenants didn't want to have anything to do with Ghorbanifar or Secord and appear to have opposed the whole idea. Rather than give the assignment to his reluctant lieutenants, it appears Casey gave the operation to North.

In short, Casey didn't trust his lieutenants. Casey and Poindexter didn't trust Shultz and Weinberger. Casey and Poindexter didn't trust the Intelligence Committee of Congress.

A lot of this lack of trust came directly from the astounding number of leaks in recent years of highly sensitive classified information from sources both in the Administration and Congress.

Simple public disclosure of classified information can be just as damaging to our national security as selling secrets to the enemy. In recent years, leaks from both ends of Pennsylvania Avenue have been far too common. No amount of legislation can completely stop this, but I think there would be fewer leaks and greater trust if Congress created one small Joint House/Senate Intelligence Committee and passed laws such as my bill, H.R. 3066, to make it a felony crime for any officer or employee of the Federal Government to leak any classified information.

Another thing these hearings have demonstrated is the serious lack of an effective and acceptable counter-terrorist policy, especially one to deal with hostage-taking situations such as we have in the Middle East. If the President had been presented with a reasonable alternative for getting our hostages back, he probably would not have pursued the Iranian arms initiative the way he did.

Although Secretary Shultz and Secretary Weinberger have been publicly praised for their good judgment and counsel it does not appear that they tried to provide a viable alternative to the President. In response to direct questioning, Secretary Weinberger adamantly refuted Admiral Poindexter and Robert McFarlane's testimony that neither he or Secretary Shultz offered an alternative by saying that he had indeed offered the President alternatives for getting our hostages back. However, he indicated that the alternatives were "too sensitive" to discuss in public session and said that he would happily discuss them with the committee in closed session. When efforts were made to arrange such testimony the Secretary refused to cooperate and the committee decided to stand by its policy of not issuing subpoenas to compel the testimony of cabinet officials. Based on the testimony of CIA witnesses it appears unlikely that Secretary Weinberger presented any workable suggestion.

Although we have highly trained special operations forces, we couldn't use them to rescue our hostages in Lebanon because we didn't have sufficient intelligence information to conduct operations. This is sad evidence of a CIA greatly weakened in the 1960s and 1970s. Congress and the Administration need to redouble efforts to rebuild the CIA.

If we can locate and arrest terrorists, as was done recently in international waters by the FBI, we should be willing and able to act against the terrorists in such a way as is calculated to bring about the twin goals of getting our hostages returned and deterring future hostage taking. Shouldn't we consider some strong approaches such as special operations raids on terrorists' camps or possibly taking terrorists hostage? At the very least, we need to see special operations laws passed by Congress last year implemented.

In spite of these obvious institutional failures, the majority report reaches the conclusion that the mistakes unearthed in our hearings came about because the President put the wrong people (political appointees) in office and that there was really nothing of significance wrong with our system that contributed to these mistakes. In the majority's view none of this would have happened if the President had relied on "career professionals" who would have adhered to regulations and institutional procedures. I find this shallow conclusion not only misses the mark on the role that leaks of classified information and the absence of an effective hostage-taking policy played in all this, but it misses the big problem that we have with an entrenched civil service bureaucracy that frustrates to the extreme elected and appointed officials trying to carry out national security policies.

It is clear from the testimony that time and again, faced with the frustrations of inefficiencies and of opposition from an entrenched bureaucracy, Director Casey, Admiral Poindexter, Colonel North and others chose to go outside the normal systems within the departments and agencies of our government to get the job done. In doing so they made some mistakes. To the majority, going outside the system at any time is an unforgivable mistake and a demonstration of the weakness and incompetence of an elected or appointed official. At no time does the majority acknowledge that there is a major problem with any system which is so inefficient or frustrating that it drives good men to take the drastic step of going outside the system. Director Casey is not the first head of the CIA to be driven up the wall by roadblocks put in the way of carrying out policies by "career" civil servants who were bent on having their way regardless of the views at the top. A few quotes from the book *Secrecy in Democracy* by Admiral Stansfield Turner demonstrate this point:

"Early in my tenure as head of the CIA I realized that managing the Agency was unlike any management experience I ever had or any I studied at Harvard Business School. Here are some matters that brought me to that conclusion.

". . . Almost the entire personnel system was also considered to be out of the director's purview. Major appointments, such as chiefs of station were being made without my approval. Once, when I requested the heads of the three operating branches to submit to me a list of their most promising, versatile people in top pay grades, I had a near-rebellion on my hands. I wanted to consider these people for special assignments outside their branches to broaden and develop their potential for top agencywide leadership positions. The branches were indignant that I considered interfering with 'their' people's careers . . . When the first annual budget came to me for approval, everything had been decided. The three branches expected me to rubber-stamp what they wanted.

". . . From what I could discern these were all practices of longstanding. As I began to express concern that I was not consulted on decisions in these areas and others, many became defensive and cautious about volunteering information to me.

". . .The last thing these three (the branch chiefs) want is for the DCI to become a strong central authority . . . What they had in mind was someone who would fight the political battles for them with the White House, with Congress and with the public, but would leave them the management of the Agency and its operations.

". . . I wondered whether there was something in the nature of the profession, instead of the personal disposition of these men, that made tight control undesirable to them . . . To prevent one branch from intruding into another's territory, they had established as complex a maze of bureaucratic procedures as I have witnessed anywhere in government.

". . . There were many reasons why I could not accept the system. I felt it my responsibility to assure the American public that I knew what the CIA was doing and how it performed . . . I felt personally responsible for prevention of any repetition of the kind of error the old system failed to prevent."[1]

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[1] Stansfield Turner, *Secrecy and Democracy: The CIA in Transition*, (1985), Chapt. 15, pp. 183-188

While "career" mindsets and other inefficiencies will always exist in a civil service bureaucracy (and I do not advocate eliminating civil service), a major study should be undertaken of the structure of our national security policymaking and implementation apparatus in each office, agency and department of our government dealing with national security matters for the purpose of making recommendations to the President and Congress on how to streamline the system and assure the least bureaucratic resistance possible in the implementation of policies directed by those appointed by the President. In matters of national security it is essential that problems of bureaucracy be reduced to the bare minimum.

In the final analysis, no matter the motives and good intentions, mistakes were made: the decision to trade arms to the Iranians and deal for hostages; the diversion of Iranian arms profits to the Contras; the decision by Admiral Poindexter to keep the diversion from the President; the misleading and untruthful statements to Congress; and the lying to the Attorney General and altering and shredding documents last November.

Criminal prosecutions may flow from some of these, but most who viewed these hearings would find trials and criminal sanctions inappropriate. It is time now to put these matters behind us and to bring something positive out of all of this. The recommendations contained here and in the dissenting views of the minority are a good place to start.

BILL MCCOLLUM.

Additional Views of Senator Paul Trible

I have joined the majority of my colleagues in this Report because its interpretation of the facts, the law, and policy considerations in most instances squares with my own. I am not, however, in accord with the majority in every particular, nor do I assess the roles of our institutions in precisely the same way.

The essence of the Iran-Contra Affair lay in the decision by a few within the National Security Council Staff to embark on a self-destructive journey into the privatization of foreign policy. The pitfalls associated with this departure from long established principles of government are well chronicled in the Report. The main lessons are: that a President's staff, no matter how well intentioned, must always be accountable; that a President who is deceived and from whom information is intentionally withheld is a President betrayed; and that truth, trust and respect for the rule of law and the Constitution are indispensable to the success of our free society.

Moreover, the Report vividly demonstrates the folly of placing public policy in the hands of private citizens motivated in part by profit. Since Old Testament times, man has been admonished that he cannot serve two masters. Yet the decision to permit Secord, Hakim and their confederates to negotiate in the name of the United States, while permitting their Enterprise to reap huge profits, frustrated our nation's policy goals, embarrassed our government and confused our allies. I recall the shocking irony when Oliver North realized during his testimony that while he was sending desperate Prof notes detailing his anguish over the plight of the Contras, over $4.8 million was collecting interest in Secord and Hakim's secret Swiss accounts.

Time and again during our deliberations in the Iran-Contra Affair, we return to one central theme—our Nation's lack of foreign policy consensus. Whether one looks at the Administration ignoring established foreign policy channels or at a Congress writing ambiguous prohibitions on use of appropriated funds the reason is the same: our inability to agree on the appropriate role of America in the world.

This sharp disagreement—the breakdown in a bipartisan approach to foreign policy—has lead to confrontation, misunderstanding and created an atmosphere of suspicion that is the enemy of coherent and thoughtful decision making.

The Majority Report fails to acknowledge the responsibility of Congress in all this. We have blamed others and not ourselves. The report fails to address adequately the inconsistency of Congressional policy toward Central America, the failure of the Intelligence Committees to monitor sensitive activities closely, or Congressional refusal to accept the consequences of terminating aid to the Nicaraguan Democratic Resistance. Yet these elements contributed massively to a climate in which the Iran-Contra Affair could happen. None of this justifies what occurred, but it does put events in a wider perspective.

I am also troubled by the sweeping character of the indictment of the President.

Certainly all Presidents are responsible for what happens on their watch. However, there is absolutely no evidence that President Reagan knew about the diversion of funds to the Contras. The President's judgement on the sale of arms to Iran can be faulted, but there is no evidence of wrongdoing on the part of the President.

The argument that this President failed to honor his constitutional duty to "take care that the laws be faithfully executed" and failed to create an environment where the rule of law governs goes too far.

It is as though the majority seeks to assign blame where there is no culpability. The fact that the President's subordinates chose to keep something secret, does not indicate dereliction of duty by the President.

Nor is the argument that the President should have known more persuasive. Contending the President should have known what is purposefully withheld from him is to require omniscience. We demand much from our chief executive but that seems to me far too much to ask.

It is also important to recall that time and again the Regan Administration has demonstrated a commitment to democratic principles, to truth, and the formulation of foreign policy within proper boundaries. Its successes are dramatic and overshadow the Iran-Contra Affair.

We have seen a resurgence of freedom and democracy in Central America, the liberation of Grenada, establishment of democracy in the Philippines and a significant movement now toward freedom in Korea. The Reagan Administration has won support for anti-

Communist freedom fighters in Afghanistan and Angola. And we are on the verge of a breakthrough for substantial reductions in nuclear arms.

While the acts revealed at our hearings cannot be tolerated in our free society, my strong feeling of disapproval of what occurred in this affair is balanced by my belief that from January 1981 to the present, this Administration has achieved success by means that conform tot he requirements of our law, our Constitution and our political tradition.

I came to and leave this investigation as a supporter of the goals and policies of this Administration and President Reagan, a strong believer in the need to oppose Soviet expansion in Central America, and the necessity for covert activities provided they are conducted through proper channels and consigned to the proper hands.

PAUL TRIBLE.

Section IV
Appendix

Appendix

Organization and Conduct of the Committees' Investigation

The investigation of the Iran-Contra Affair by these two Select Committees was one of the more far-reaching that Congress has conducted in recent decades, extending to many offices and agencies of the U.S. Government, to Government and commercial activities throughout the United States, and to events in a number of foreign nations. This account of the investigation describes how the Select Committees gathered the evidence and developed the record on which their Report is based.

The Establishment of Two Congressional Committees

The 100th Congress launched this investigation of the Iran-Contra Affair as one of its first actions after convening in January 1987. On January 6, the Senate established the Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition.[1] The following day, the House established the Select Committee to Investigate Covert Arms Transactions with Iran.[2] Both Chambers directed their respective Select Committees to conduct an extensive investigation and to submit legislative recommendations. The Resolutions in both Chambers had bipartisan sponsorship and were adopted by roll call votes of 416 to 2 by the House and of 88 to 4 by the Senate.

The Select Committees' investigations were not the first look that Congress had taken at the sale of arms to Iran in 1985 and 1986, the diversion to the Nicaraguan Resistance (or Contras) of some of the proceeds of those sales, and related events. Several standing committees, including the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, conducted preliminary investigations of these events and issued reports of their findings in December 1986. The two new Select Committees assumed the jurisdiction of several Congressional Committees and were charged with undertaking a comprehensive investigation of U.S. Government agencies and individuals involved in transferring arms to Iran and in diverting funds to support the Contras.

The Senate Select Committee had 11 Members:

Chairman Daniel K. Inouye (D-Hawaii)
Vice Chairman *Warren Rudman* (R-New Hampshire)
George J. Mitchell (D-Maine)
Sam Nunn (D-Georgia)
Paul S. Sarbanes (D-Maryland)
Howell T. Heflin (D-Alabama)
David L. Boren (D-Oklahoma)

James A. McClure (R-Idaho)
Orrin G. Hatch (R-Utah)
William S. Cohen (R-Maine)
Paul S. Trible, Jr. (R-Virginia)

The House Select Committee had 15 Members:

Chairman Lee H. Hamilton (D-Indiana)
Vice Chairman Dante B. Fascell (D-Florida)
Thomas S. Foley (D-Washington)
Peter W. Rodino, Jr. (D-New Jersey)
Jack Brooks (D-Texas)
Louis Stokes (D-Ohio)
Les Aspin (D-Wisconsin)
Edward P. Boland (D-Massachusetts)
Ed Jenkins (D-Georgia)

Dick Cheney (R-Wyoming)
Wm. S. Broomfield (R-Michigan)
Henry J. Hyde (R-Illinois)
Jim Courter (R-New Jersey)
Bill McCollum (R-Florida)
Michael DeWine (R-Ohio)

A Joint Investigation

Even as the two Select Committees began work independently, the idea of a joint investigation arose. With the support of Vice Chairman Rudman and Ranking Minority Member Cheney, Chairmen Hamilton and Inouye resolved problems arising from the fact that the two Committees worked under different mandates and represented Chambers with different procedures and traditions.

The result of these negotiations was a series of firsts for the Congress: the first joint investigation conducted by two separate Committees, one of the House and one of the Senate; the first joint hearings held by two such Committees; and the first time that Committees of the House and Senate had ever submitted a combined report to their respective Chambers—including the names and views of Members of both Chambers.

Before the Committees agreed to share resources and work together on many aspects of the investigation, they had already set up separate offices and assembled separate staffs. The Senate Select Committee occupied the ninth floor of the Hart Senate Office Building. It appointed Arthur L. Liman, a senior partner of the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison, to serve as Chief Counsel. Supervising the investigation with Mr. Liman were his law partner Mark A. Belnick (Executive Assistant to the Chief Counsel) and Paul Barbadoro (Deputy Chief Counsel), who had served both as Assistant Attorney General of the State of New Hampshire and later as Legal Counsel to Senator Rudman. The Executive Director of the staff was Mary Jane Checchi. Lance I. Morgan served as Press Officer and assisted substantially with the preparation of this Report and in other Senate Committees' work. The Senate Committee staff included Associate and Assistant Counsels, experienced investigators, experienced accountants detailed from the General Accounting Office, computer experts, and security and administrative officers. At the height of the investigation, the Senate staff totaled 54 people.

The House Select Committee worked in a vault-like office under the dome of the Capitol. The Committee appointed John W. Nields, Jr., a senior partner in the Washington, D.C., law firm of Howrey and Simon, to serve as Chief Counsel. W. Neil Eggleston, an Assistant U.S. Attorney in New York, was appointed Deputy Chief Counsel, and Robert J. Havel, Director of Public Relations for the Association of Trial Lawyers of America, was chosen as Press Liaison. Chairman Hamilton appointed Casey Miller as Staff Director. Assisting the Committee was a staff of 45 that included attorneys, investigators from the Department of Defense, the Federal Bureau of Investigation, and the Office of Special Investigations of the General Accounting Office; security and administrative officers; and associate staff from standing House committees and Members' offices. Specialists from House Information Systems provided expert computer assistance and analysis capability.

Minority Members of the House Select Committee, led by Representative Dick Cheney, appointed Thomas R. Smeeton, Republican Counsel to the House Permanent Select Committee on Intelligence, as Minority Staff Director; George W. Van Cleve, Committee Counsel to Representative Cheney, as Chief Minority Counsel; and Richard J. Leon, a Senior Attorney in the Justice Department's Tax Division, as Deputy Chief Minority Counsel. They directed a Committee staff of nine and an Associate staff of six, who assisted Minority Members in preparing their contributions to the Report of the Committees.

The division of labor within the Committee involved all staff members. Security staff, technically assigned to the Majority, served both Majority and Minority Members and their staffs. The work of investigators, technically assigned to the Majority, was available to Members of both the Majority and Minority. The Committee's staff was responsible for all preparations for the hearings, notably in developing the briefing and exhibit books. Overall, approximately 12 people worked primarily for the Majority, while 9 worked primarily for the Minority.

Organization of the Investigation

The Congressional investigation of the Iran-Contra Affair was undertaken and conducted directly by the the two Chairmen, the Senate Vice Chairman, the Ranking House Minority Member, and Members of the two Select Committees. They decided on the lines of inquiry to pursue, directed Chief Counsels and staff in obtaining documents and developing evidence, chose witnesses to be deposed or to testify at the hearings, prepared questions for witnesses, read depositions, and reviewed the record. They met regularly for briefings and to exchange ideas and information, discuss the evidence, and provide ongoing direction to the Chief Counsels and staffs. Several Members focused individually on certain areas of the investigation. Members also selected the themes to be emphasized in this Report and they decided which matters were relevant for inclusion in the Report.

The Chairmen organized the respective Committees' attorneys and investigators into teams that concentrated on different areas of the inquiry. Flexibility was nevertheless preserved so that staff members could be employed as needed.

When the Senate and House Committees agreed to combine their investigations and hearings, the Chairmen agreed that staff members from both would work closely. The investigative teams consisted of both Senate and House Committee staff members who met regularly with the senior staff members of both Committees. Members, Counsel, and/or investigators from both staffs attended interviews and depositions.

Primary responsibility for potential witnesses was divided between the two Committees, an allocation of responsibility that continued throughout the witnesses' appearances at the public hearings. Thus, for example, Vice Adm. John M. Poindexter was designated a "Senate witness," meaning that Senate Committee Members and staff had primary (but not exclusive) responsibility for preparing him and that Senate counsel took the lead in examining him at the public hearings. The House, on the other hand, had primary responsibility for Lt. Col. Oliver L. North.

Under the direction of the Committees and of individual Members, investigative teams assembled documentary evidence before proceeding with full scale interviews or depositions. Documents were obtained from Government agencies through written requests and from private parties by cooperation or subpoena. From the White House, the Department of State, the Department of Defense, the Central Intelligence Agency, the Department of Justice, other Government offices, and private parties, the Committees collected more than 300,000 documents totaling more than 1 million pages, all of which were reviewed and analyzed by the staffs and many of which were entered into the Committees' computerized database.

Unsworn interviews and sworn depositions were the other principal investigative tools. The combined staffs conducted about 250 interviews and deposed about 250 people. The Committees dispatched Members, attorneys, and investigators throughout the United States and abroad to gather information and to interview and depose individuals.

The activities that the Committees investigated were shrouded in secrecy and it was in the National interest that the facts be found and publicly exposed as rapidly as possible. The Committees proceeded expeditiously with their investigation, which began in January and continued through October. An important part of the Committees' responsibilities was to present the testimony of the participants at open hearings so that the public could learn directly from the witnesses the facts that had been withheld and concealed for over two years. At the same time, the Committees were guided by a resolve that before public hearings commenced they should conduct as thorough an examination of documents and witnesses as possible. Although the process produced over 300,000 documents and more than 500 interviews and depositions, nothing could restore the documents that had been destroyed before the investigation began; nor could any amount of investigation compel witnesses to recall what they professed to have forgotten or overcome the death of CIA Director William Casey. The Committees set their own timetable, taking into account the Independent Counsel's mandate and his strenuous objections to early grants of use immunity to key participants. The public hearings were originally contemplated for late February, but did not commence until May, when the Committees concluded they were ready to begin the first phase. But the investigative work continued even when the public hearings were in progress and after they ended.

Security

Security was a major concern for both Committee offices because much of the investigation involved closely held secrets of the U.S. Government. To untangle the web of events that stretched from the Middle East to Central America, the Committees' Members and staffs first had to cull through top secret information about covert operations, some of which involved foreign governments. From the outset, the Committees adopted and enforced the highest standards of U.S. Government security procedures.

To ensure that documents and information were handled properly, every staff member was required to obtain a top secret security clearance. Procedures for granting security clearances to House Committee staff represented a significant advance in clearing staff of Congressional investigations. Procedures respectful of the separate constitutional functions of each branch were worked out among Chairman Hamilton, Attorney General Meese, and the Honorable David M. Abshire, the Special Counsellor to the President, and were set forth in a letter to Ambassador Abshire from Chairman Hamilton on February 19, 1987. Under these procedures, Chairman Hamilton would submit to the Department of Justice the name and background information on each individual whom he was considering for clearance. The executive branch, usually through the Federal Bureau of Investigation, would conduct the standard background investigations and would submit the results and any recommendation to Chairman Hamilton. When he was satisfied that the individual met the requirements for clearance, he would inform the individual and the Department of Justice, which would provide an indoctrination briefing on security. The individual would then execute both a briefing acknowledgment and a nondisclosure form developed by the House Committee. (See letter from Chairman Hamilton to David M. Abshire, Special Counsellor to the President, 2/19/87.) In order to expedite the Committee's work, Attorney General Meese agreed to recommend that certain staff be cleared pending completion of their background checks.

The offices of each Committee were designed and managed to ensure security. Offices were fitted with storage vaults accessible only to specially designated staff through an alarmed, combination-locked door. Inside these vaults, documents were kept in individually locked security safes approved for this purpose by the National Security Agency and the Central Intelligence Agency. Security personnel were on duty whenever offices were open.

Committees' Members and staffs could request documents on a need-to-know basis, and security staff maintained duplicate records verifying the time and date of each transfer of a document and the name of the person who requested it. The Senate Committee offices also contained a sophisticated "clean room" that was secure from outside interference—including emissions of electronic devices—and was used for the most sensitive interviews and discussions.

House Official Reporters with the requisite security clearances recorded classified depositions, which were conducted in secure facilities and attended only by Members and other individuals with the requisite security clearances.

Computers and other electronic office equipment were protected from emission interception through technical security measures meeting "TEMPEST" standards. TEMPEST security ensured that no electronic signals would reach beyond the confines of the offices. Telephones were also designed with a "positive disconnect" system so that they could not be used as listening devices. Secure telephones were installed for conversations between the Committees and the White House.

Public Hearings

The public hearings opened on May 5, 1987, in the Senate Caucus Room of the Russell Senate Office Building. The location of the hearings alternated weekly between the Senate Caucus Room and the House Foreign Affairs Committee Room, Rayburn House Office Building, Room 2172. The Committees took testimony from 28 witnesses during 40 days of joint public hearings—from May 5 to August 3—and took private testimony from 4 witnesses during 4 days of closed hearings (a total of approximately 262 hours of testimony). There were 1,092 exhibits presented during the public hearings.

Pursuant to a rule formally adopted by both Committees, the location of the hearings determined which Committee's rules governed. When hearings were held in the Senate Caucus Room, the Senate Committee's rules applied and Chairman Inouye presided; when the hearings took place in the House Foreign Affairs Committee Room, the House Committee's rules applied and Chairman Hamilton presided.

The hearings were transcribed by the House Official Reporters, who produced transcripts on a "split-rush" basis for the staff and the media. The Reporters typed transcripts of the morning sessions by mid-afternoon of the same day and of the afternoon session by mid-evening, without verifying the transcripts against tape recordings of the testimony. These transcripts, therefore, contained some errors in transcription, which were corrected later.

The Committees considered it important also to preserve a visual record of the Hearings. Accordingly, they arranged for the Hearings to be videotaped by the Senate Recording Studio, which produced one tape for archival purposes and one additional tape for use by each Committee.

Immunity

In their respective authorizing Resolutions, the Committees were empowered to compel testimony over Fifth Amendment objections by obtaining a court order immunizing a witness against the use of compelled testimony in criminal prosecutions. This limited immunity is commonly known as "use immunity." Although it does not bar criminal prosecution of the compelled witness, use immunity imposes on the prosecutor the burden of demonstrating that the prosecution's evidence is not based on or derived from information obtained during the immunized testimony. The Committees were mindful of this burden on the Independent Counsel in deciding whether to obtain immunity orders for particular witnesses.

Other factors also influenced the Committees' decisions on immunity, including the Committees' need for evidence from a particular witness, the extent to which the witness' testimony was likely to be probative, and whether any alternative sources of the same evidence existed. The Senate Committee voted to compel testimony through use immunity for 26 witnesses and the House Committee for 26 witnesses.

Proceedings Relating to Swiss Bank Records

One of the key considerations in assessing whether to grant use immunity for Albert Hakim, who had asserted his Fifth Amendment privilege, was the extent to which the Committees could otherwise obtain records of the secret Swiss bank accounts involved in the Iran-Contra Affair. Those records were critical to a key aspect of the Committees' investigation: following the money trail.

The relevant bank records were protected from disclosure by Swiss bank secrecy law. The Committees initially hoped to overcome this obstacle by application to the Swiss authorities pursuant to a treaty between the United States and Switzerland. After discussions with the Department of State and research by the staff, however, the Committees concluded that the Swiss would take the position that the Committees were not criminal investigative authorities and were therefore not covered by the Treaty.

The Committees next endeavored to reach an agreement whereby the Independent Counsel would make copies of the bank records available to the Committees once he obtained them pursuant to the Treaty. The Independent Counsel, because he believed that any such agreement would prejudice his own chances of obtaining the records, declined.

The Committees also sought to obtain the records by compelling Richard V. Secord to execute a waiver of his secrecy rights under Swiss law pursuant to a procedure approved in *U.S.* v. *Ghidoni*, 732 F.2d 814 (11th Cir.), cert. denied, 469 U.S. 932 (1984), and other cases. Secord, however, successfully challenged the Senate Committee's order compelling him to execute such a waiver. When Secord subsequently agreed voluntarily to provide evidence to the Committees, he claimed that he had no relevant Swiss bank records and that all such records were under the control of Hakim. Accordingly, the Senate Committee decided not to appeal the district court's decision, and the case was withdrawn.

The Committees decided that, to obtain the critical financial records, they would have to obtain an order of use immunity for Hakim. After the order was obtained, Hakim produced his records, and equally important, assisted in interpreting them through his compelled testimony. The evidence thus obtained was indispensable to the Committees in tracing the flow of money in the Iran-Contra Affair.

Proceedings Relating to Oliver L. North

Given Lt. Col. Oliver L. North's Fifth Amendment objections when subpoenaed, the only way to obtain his testimony was to compel it through a grant of use immunity. The Committees' decision to grant him use immunity was not an easy one. Because North was a principal target of the criminal investigation, the Independent Counsel strenuously urged the Committees to forego any grant of immunity to North. At the same time, it was clear that the Committees' failure to obtain North's testimony would leave the record incomplete.

After weighing the need for North's testimony against the arguments of the Independent Counsel, the Committees decided to strike a balance. They deferred obtaining an immunity order and compelling North's testimony until the latter stages of their investigation; in return, the Independent Counsel agreed not to exercise his right to obtain a 20-day deferral of the immunity order for North after the Committees filed their application. (A similar agreement was reached with the Independent Counsel, for the same reasons, regarding the compelled testimony of Poindexter.)

On June 15, 1987, the U.S. District Court for the District of Columbia issued an immunity order compelling North to testify. Thereupon, the Committees again subpoenaed North to testify and produce documents. North, through counsel, vigorously objected and argued that, despite the immunity orders, he would be severely prejudiced in his defense of any subsequent criminal charges were he required to testify unconditionally in private and public sessions. North's counsel maintained that compelling North's testimony at such a late stage deprived North of the full benefits of use immunity and thus unfairly stripped him of a criminal defendant's most important right—to remain silent.

North's counsel demanded, *inter alia*, that the Committees agree to limit North's testimony to a maximum of 3 days and not to recall him under any circumstances. He demanded also that the Committees agree not to require North to produce documents until immediately prior to his appearance for testimony. If such demands were not met, North's counsel informed the Committees that he would advise his client to disobey the subpoenas and defend against criminal contempt charges.

The Committees were thus confronted with another difficult decision. Criminal contempt proceedings could take years to complete and, even if successful, would not necessarily result in obtaining North's testimony. The penalty for criminal contempt is imprisonment, not compulsion of the recalcitrant witness' testimony. Although civil contempt proceedings do coerce testimony from the witness, serious statutory questions arose as to whether the Committees could successfully mount civil contempt charges against North, given his status as a Government employee.[3] Although the Committees firmly believed that North's legal arguments were without merit, it was not clear that the jury in a criminal contempt case would agree. Furthermore, certain of North's arguments were persuasive to the Committees as a matter of fundamental fairness to an individual facing likely criminal prosecution.

Accordingly, the Committees again struck a balance. The Committees decided to restrict North's private testimony, in advance of his public appearance, to a single session limited to the subject of the involvement and knowledge, if any, of the President regarding "the diversion." Also, the Committees reaffirmed their intention to try to complete North's public testimony in 4 days and not to recall him for further testimony unless extraordinary developments created a compelling need therefor. It should be noted that the Committees had not recalled any witness prior to North's appearance, nor did they afterward. Robert McFarlane testified for a second time, following North's appearance, only at his own request. (The Committees declined to commit to limit North's testimony to 4 days. His public testimony actually continued for 6 days, and he was not recalled thereafter.) The Committees rejected all of North's other demands.

The Committees' decisions regarding North's testimony were made to accommodate the legitimate concerns expressed by his counsel without sacrificing the Committees' power or the integrity of the proceedings. As a result, North appeared in response to the Committees' subpoenas, produced his notebooks and other relevant documents, and submitted to extensive questioning.

The Committees' Use of Computer Technology

The quantity and breadth of material to be analyzed by the Committees necessitated the use of computerized databases to facilitate the storage, organization, and retrieval of information.

The Committees' primary use of the computers, beyond word processing tasks, was to compile a number of databases containing the materials obtained in the investigation. Because of the large volume of information and documents involved and the wide range of issues addressed by the investigation, it was essential to develop systems that would enable the Committees to store and retrieve these materials in a prompt, efficient, and useful manner. Two general needs were addressed. The first was the need to extract from the vast amount of material available the documents or information pertinent to a particular witness or a particular inquiry. The second need was to locate specific documents or information from among the many thousands of documents and the numerous transcripts in the Committees' files.

The Senate Committee staff accepted responsibility for the computer filing of documents and gave copies of its codes and documents to House Committee staff. The House Committee staff also operated a computerized document retrieval system. To facilitate filing and retrieval, each page of each document was assigned a Senate code number prefaced by one or two letters indicating the source of the document.

Later, a text-oriented database product was added that allowed document summaries to be searched. The addition of a full-text search capability made possible more complex queries.

Declassification

Before any classified documents were publicly released, they were submitted by the Committees to the White House for review by a Declassification Committee composed of representatives from the affected executive departments. The declassification process worked smoothly. There were no major disagreements, compromises were struck where necessary, and the Committees were generally satisfied with the outcome. The members of the Declassification Committee, led by Brenda Reger of the NSC staff, were a dedicated group of professionals, who processed voluminous materials rapidly, sometimes in just a few hours or overnight (including weekends), so that they could be used at the hearings or included in this report. The Declassification Committee also expedited clearance of this Report itself on a chapter-by-chapter basis reviewing over 2,100 pages of typescript and devoting more than 2,000 hours to the task. The result of this effort was public disclosure of critical facts with due regard to considerations of national security and U.S. foreign relations.

The declassification procedure involved sending documents to the White House with a request for declassification. The Declassification Committee reviewed the documents, redacting information that could not be declassified. For this Report, the Declassification Committee then discussed with the Committees' staffs ways to resolve any problems with classified information, so that an entirely unclassified Report could be published.

The House and Senate Committees together submitted more than 4,000 documents to the White House Declassification Committee. A computerized control system was developed at the Select Committees to keep track of which documents had been declassified, which were in the process of declassification, and which remained to be declassified.

Fund-Tracking System

Following the "money trail"—the sources, movements, and locations of funds involved in the investigation—necessitated the establishment of separate specialized databases. Two closely related files were created. The first identified all relevant bank accounts; the second contained the detailed transactions. Data were first entered into the bank account file to be used to verify transactions. Each account was verified to flow from a known account to another known account. After the bank account file was prepared, specific transactions were entered into the second file. All monetary amounts were typed twice; the program monitored the entry to ensure that the two entries were identical. The accounting firm of Price Waterhouse provided professional accounting services to the House Committee, and the General Accounting Office provided similar services to the Senate Committee.

Special-Purpose Systems

During the course of the investigation, several additional computer systems were developed to fill more specialized needs. A simple database was prepared to list all exhibits used in public testimony, including the date each was entered into the official record. Subpoenaed telephone records of several witnesses were entered into a database, permitting a variety of database searches including chronological listings, lists of calls to a particular location, and frequently called numbers.

The hearings transcript database was one of the more useful databases. All testimony was entered in this database, which could be scanned by key word and could print out all transcript references to a particular event or person. The House Committee staff could also search a chronology of events, as well as all material produced on its word processors.

Staff members of the House Information Systems group and the Senate Computer Center were particularly helpful in establishing and managing the databases and in assisting with computer and word processor operations generally.

Cooperation from the President

The Committees received cooperation from the White House. The President did not claim executive privilege, and he directed pertinent executive departments, including the White House, to make available all relevant documents and personnel. The President also made available his personal biographer for interviews and relevant extracts from his personal diaries, pursuant to an agreement between the Committees and the White House. The President declined, however, to permit the Committees to make reference to his diary extracts in this Report.

Pending Request

Relevant PROF messages that had not been deleted as of November 15, 1986, were produced by the White House to the Committees. However, in August 1987, after the Committees' hearing, the Committees' computer experts informed the Committees of a possibility that PROF notes deleted from the NSC computer might still be retrieved. When a sender or receiver of a PROF message deletes a message, he deletes only the computer's ability to call the message up to the computer screen. The message itself is not actually deleted. Deletion of the message itself occurs when the user writes a new message over the old message in his "user space." The selection of which portion of the user's space is occupied by the new message is made randomly by the computer. (Each user has his own limited amount of user space.) The computer has the ability to print out a "dump" of all data stored in selected user areas, i.e., both the "deleted" messages which have not been written over and the "live" messages.

On August 31, 1987, the Committees made a written request for a number of things including a complete "dump" of the PROFs user areas for North, Poindexter, Robert McFarlane, and Don Fortier. According to the Committees' computer experts these dumps could be printed in less than a day. The White House initially rejected the requests by letter dated September 4, 1987 on grounds of "separation of powers principles, and Constitutional prerogatives." Specifically with respect to the computer "dump" it stated that the requested information would be irrelevant and would involve highly sensitive national security matters. The White House also said it believed the chances of obtaining any usable information to be extremely remote, i.e., that all or substantially all of the deleted messages had been written over, and that it would take too much time to perform the "relevancy and classification review" of the dumps. The dumps would be thousands of pages long, and the White House contended that most if not all of which would consist of "live" messages already reviewed. Since there is no way of telling from the face of the dump which messages are "live" and which are not, the entire dump would have to be reviewed. The White House refused to review the dump itself on the ground that it would take too much time, and declined to permit the Committees to review it on national security grounds.

The Committees did not agree. They pursued the matter further, and prevailed on the White House to print out a sample portion of a "dump" for one of the users. The White House informed the Committees that it contained only live material that had already been reviewed. The White House reasserted that it would not perform complete dumps, but agreed to print out dumps containing only the deleted material if a computer program could be written which would separate the "deleted" data from "live" data which had previously been provided to the Committees.

The White House declined to permit the Committees' experts to have access to the NSC computer system to perform this task on national security grounds, but on several occasions the White House cooperated, and has stated that it will continue to cooperate, by making NSC and White House personnel available to provide information concerning the system so that such a program could be written.

Extraordinary efforts were made by the Committees and its experts during September and October to develop this program. Due to the difficulty of this task, the experts had not yet completed a working program as of early November.

The Committees believe that it is important for them to obtain and review this data to determine whether it contains information significant to the investigation, and are hopeful that their continuing efforts to retrieve remnants of "deleted" PROF messages will be completed at or around the time that this Report is issued. There is no assurance that the material extracted will be anything more than fragments, and even the fragments may be unrelated to any matters under investigation. Consequently, the Committees decided not to delay issuance of this report. However, if any new and relevant information is uncovered from the PROFs system and not included in this Report, the Committees will take the necessary steps to make it available to the standing Intelligence Committees and, if appropriate, provide it to the Independent Counsel.

Another potential source of additional evidence was data on word processing diskettes gathered from NSC staff offices. Many critical documents, including the key diversion memorandum, were typed on such diskettes.

The Committees made requests to the White House and the Independent Counsel who had joint custody of the diskettes themselves, and received numerous documents that were printed off all these diskettes and have been assured that all relevant materials which can be printed from such diskeetes at this time have been produced. If further "deleted" materials can be printed off these diskettes, we are confident that the Independent Counsel will do so.

Cooperation from Other Governments

The Committees received unprecedented cooperation from the State of Israel. Israel entered into an agreement with the Committees to prepare and provide extensive financial and historical chronologies detailing the role of Israel and individual Israelis in the Iran initiative from 1985 through 1986. Israel was unwilling to waive its privileges of State secrecy and sovereign immunity and permit its officials and citizens to be questioned by the Committees. In lieu of interviews or testimony, and without waiver, Israel agreed to obtain and review relevant documents from Israeli participants and to interview Israeli nationals. With the specific agreement of the Government of Israel, information from the Israeli chronologies is used in this Report. The Committees used this material sparingly and only where it was the best or only evidence of relevant facts.

The Committees' Report

The Committees' Report was prepared as a joint effort. The Committees directed their Chief Counsels to organize staff attorneys into writing teams that were responsible for drafting chapters based on the information that the investigation had produced. Associate staff acted as critical readers, and support staff provided fact- and cite-checking as well as word processing capability. The Members of both Committees, acting on their own or through their Chairmen, were involved in or apprised of every important step in the process, from drafting to reviewing and finalizing the Report.

The staff produced a draft version of the Report by mid-September 1987, and the Committees separately reviewed and revised the draft. Members continued to review and revise drafts until November 5, 1987, when the Committees adopted the Report by separate votes.

A professional editing team edited, illustrated, and produced the printed volumes. Design services were provided by the Superintendent of Typography and Design of the Government Printing Office.

Conclusion of Activities

The Committees concluded their work by filing their joint Report respectively with the House and the Senate on the designated days. A skeleton staff remained during November to complete the publishing program and to catalog and prepare the Committees' documents and papers for permanent storage.

Endnotes:

1. S. Res. 23, 100th Cong., 1st Sess. (1987).
2. H. Res. 12, 100th Cong., 1st Sess. (1987).
3. Title 28, U.S.C. 1364.